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Milton Viorst:

Bureaucratic Pull

Shortly after Congress returns to work next week, President Ford will confront the likelihood of a decisive override on a bill that, by almost any standard, he never should have vetoed. It's called the Freedom of Information Act amendments.

Ford's veto was widely interpreted as proof of the pervasive power which the Nixonian mentality, if not the Nixon entourage itself, retains in the White House. The veto has been described as typical of the suspicion of press and public that produced Watergate.

I find that interpretation overdrawn, and I read the evidence as conveying chiefly something else. Let me explain:

Most of us are familiar, at least in a vague sense, with the power that such pressure groups as big corporations, the labor unions, the AMA and the gun-lobby exercise on the political process. We are less familiar with a pressure group that is even closer to power: the federal bureaucracy.

TO BE SURE, the bureaucracy is not the conventional interest group, pursuing its goals with money or votes. But it doesn't have to. It has other weapons.

In fact, money and votes don't necessarily assure favorable decisions, but they do assure access to the people who make the decisions. By its very nature, the federal bureaucracy inherently possesses that access, not just by appointment but on an ongoing basis.

Federal bureaucrats know how to put heat on their superiors, up to and including Cabinet officers. And the superiors, including Cabinet officers, know their work will be made easier if the bureaucracy under them is happy. It is significant that this bill was vetoed largely at the Cabinet's behest.

The bureaucracy felt threatened because the Freedom of Information Act amendments bill aims at reducing its power over the flow to the public of information about the government. Bureaucrats, like others, do not like to surrender power.

More specifically, the bureaucracy was frightened by a provision that would make an individual personally liable for erecting barriers to the legitimate flow of information. Bureaucrats dislike being faced with taking a disciplinary rap for their violations of rules.

Nonetheless, the abuses which are the target of this bill are real. In 1966, the original Freedom of Information Act was passed to assure to the public the availability of government documents. Exceptions were made for security, investigatory personnel and a few other categories of sensitive information.

But from the start, the White House insisted that the act did not cover access to any classified document, and denied that the public had a right to inquire whether a document was legitimately classified.

LAST YEAR the Supreme Court ruled that if Congress wanted to convey to the public the power to sue over the legitimacy of any document's classification, it would have to spell out the power in law. The new bill does precisely that.

This is not a partisan issue. The bill passed the House 363 to 8, and the Senate 64 to 17. Conservative Republicans as well as liberal Democrats have announced support of the override. Ford was unwise in this veto, and it will hurt him.

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J. F. terHorst:

Freedom of Misinformation

The day after his swearing in on Aug. 9, President Ford assembled the Nixon Cabinet and urged the department heads to be "affirmative" in their relations with the news media.

He promised to set a high example at the White House.

MOMENTS LATER, as he went around the table soliciting the views of the Cabinet on matters of concern to their agencies, Atty. Gen. William Saxbe brought up the amendments to the Freedom of Information Act then moving through Congress. Saxbe termed the amendments "bad legislation" and warned Ford that he might have to veto the bill.

On the way out of the Cabinet room, Counsellor Robert T. Hartmann and I, then Ford's press secretary, exchanged grim glances. It was clear that the attorney general had not caught the spirit of Ford's desire to establish an open administration after years of Nixon isolation. We immediately sought out Ford and pointed out to him that a veto of the Freedom of Information amendments would make his pledge of openness ring hollow.

Ford agreed and, displaying his keen knowledge of Capitol Hill, suggested that the Senate and House chairmen be asked to hold up the FOI amendments so his administration people could work out an acceptable compromise.

Ford knew the Hill chairmen would respond to his plea that the new administration deserved a chance to break the impasse then developing. What Ford didn't know was the depth of the ingrained Nixonian antagonism toward the media that still prevailed among the Cabinet members he had inherited.

DESPITE THE grace period that the congressional managers of the bill extended to Ford as a personal courtesy, no serious efforts to work out a compromise were made by the Justice Department, the FBI, the Domestic Council or other administration agencies whose leaders supposedly were now responsive to Ford.

It amounted to stonewalling, some actually preferring that Congress pass a bill which Ford would veto. At a meeting of the White House Senior Staff several weeks later, William Timmons, the White House congressional liaison chief retained by Ford, urged that the staff recommend to Ford that he veto the FOI legislation. And Ford, assuming Congress and not the administration was being stubborn, finally did that just last week.

In the process, however, Ford offered several new suggestions to Congress which he says will make it possible for him to sign a Freedom of Information measure.

One Ford proposal deals with the right of federal courts to review the merits of disclosing the contents of classified documents if there is no reasonable basis for keeping the information away from the public. Another Ford proposal is that Congress grant federal agencies 15 more days to produce the government information sought by citizens or news media.

The Ford ideas, although coming late in the game, deserve serious consideration. At least they could form the framework for a compromise on Freedom of Information that would be palatable both to Congress and the White House.

UNFORTUNATELY, Ford's move may be too late now. The Nixon holdovers in the administration have sandbagged the new President's pledge of new openness in government. And congressional Democrats, emboldened by their assurance of victory in next week's congressional elections, probably will be in a mood to slap at Ford for his harsh campaign rhetoric of recent weeks.

The lesson for Ford is that there still remains an excessive amount of anti-media zeal among the Nixonites in government, despite his own desire that federal agencies make more, not less, information available to the public.

It is yet one more liability Ford will have to live with until he installs his own men in the Cabinet and around the White House.

FOI

THE WASHINGTON POST

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Ford Staff Preparing New Information Bill

Associated Press

A freedom of information measure vetoed last week is being revised by White House aides to overcome President Ford's objections.

The new draft of the bill, intended to broaden public access to government documents, probably will be sent to Capitol Hill within a few days after receiving Mr. Ford's approval, aides said.

In a veto message last Thursday, Mr. Ford said he would "submit shortly language which would dispel my concerns regarding the manner of judicial review of classified material and for mitigating the administrative burden placed on the agencies, especially our law enforcement agencies . . ."

port). Referred to the Committee on Government Operations.

PROPOSED LEGISLATION BY THE DEPARTMENT OF THE INTERIOR

A letter from th Acting Assistant Secretary of the Interior transmitting a draft of proposed legislation to provide for the establishment of the Father Marquette National Memorial in St. Ignace, Mich., and for other purposes (with accompanying papers). Referred to the Committee on Interior and Insular Affairs.

REPORT OF THE FEDERAL ENERGY ADMINISTRATION

A letter from the Administrator of the Federal Energy Administration transmitting, pursuant to law, a report of hydroelectric generating facilities (with an accompanying report). Referred to the Committee on Government Operations.

ORDERS OF THE IMMIGRATION AND NATURALIZATION SERVICE

A letter from the Commissioner of the Immigration and Naturalization Service transmitting, pursuant to law, copies of orders entered in cases in which the authority of the Service was exercised in behalf of such aliens (with accompanying papers). Referred to the Committee on the Judiciary.

MODIFICATIONS OF PROPOSED FAMILY CONTRIBUTION SCHEDULES

A letter from the Commissioner of Education reporting, pursuant to law, [illegible] proposed modifications of the family contribution schedules for the basic educational opportunity grant program for the 1975–76 academic year. Referred to the Committee on Labor and Public Welfare.

REPORT OF THE DEPARTMENT OF THE INTERIOR

A letter from the Secretary of the Interior transmitting, pursuant to law, the annual report for the calendar year 1973 of the administration of the Federal Metal and Nonmetallic Mine Safety Act (with an accompanying report). Referred to the Committee on Labor and Public Welfare.

PROPOSED LEASE ACQUISITION OF SPACE

A letter from the Administrator of the General Services Administration transmitting, pursuant to law, a prospectus which proposes lease acquisition of space to be occupied by the Federal Energy Administration in Washington, D.C. (with accompanying papers). Referred to the Committee on Public Works.

REPORT OF THE VETERANS' ADMINISTRATION

A letter from the Acting Administrator of the Veterans' Administration transmitting, pursuant to law, a report on the activities of the Veterans' Administration for the fiscal year 1974 for the programs of exchange of medical information and sharing of medical resources (with an accompanying report). Referred to the Committee on Veterans Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. EASTLAND, from the Committee on the Judiciary, without amendment:

S. 1534. A bill for the relief of Doctor Lawrence Chin Bong Chan (Rept. No. 93–1196).

H.R. 6477. A bill for the relief of Lucille de Saint Andre (Rept. No. 93–1197).

By Mr. EASTLAND, from the Committee on the Judiciary, with an amendment:

S. 3397. A bill for the relief of Jose Ismarnardo Reyes-Morelos (Rept. No. 93–1198).

H.R. 14597. A bill to increase the limit on dues for United States membership in the International Criminal Police Organization (Rept. No. 93–1199).

By Mr. EASTLAND, from the Committee on the Judiciary, without amendment:

S. Res. 203. A resolution refer the bill (S. 2698) for the relief of John J. Egan to the Chief Commissioner of the Court of Claims (Rept. No. 93–1201).

H.R. 3532. An act for the relief of Donald L. Tyndall, Bruce Edward Tyndall, Kimberly Fay Tyndall, and Lisa Michele Tyndall (Rept. No. 93–1202).

H.R. 6202. An act for the relief of Thomas C. Johnson (Rept. No. 93–1203).

H.R. 7135. An act to amend the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, with respect to the settlement of claims against the United States by members of the uniformed services and civilian officers and employees for damage to, or loss of, personal property incident to their service (Rept. No. 93–1204).

By Mr. EASTLAND, from the Committee on the Judiciary, with an amendment:

S. 3718. A bill for the relief of Leah Maureen Anderson (Rept. No. 93–1205).

By Mr. NELSON, from the Committee on Labor and Public Welfare, with an amendment:

H.R. 13342. An act to amend the Farm Labor Contractor Registration Act of 1963 by extending its coverage and effectuating its enforcement (Rept. No. 93–1206).

By Mr. HASKELL, from the Committee on Interior and Insular Affairs, with amendments:

[illegible]. A bill to amend the Lower Saint Croix River Act of 1972 (Rept. No. 93–1207).

FREEDOM OF INFORMATION ACT AMENDMENTS—CONFERENCE REPORT (REPT. NO. 93–1200)

Mr. KENNEDY. Mr. President, I am pleased to send to the desk the conference report on the Freedom of Information Act Amendments—Report No. 93–1380, on H.R. 12471. The House and Senate conferees met on four occasions last month to discuss and debate a number of the provisions of this significant legislation, and I firmly believe that our final product strikes the proper balance between the rights of the public to know what their Government is doing and the needs of the executive branch and independent agencies to keep certain information confidential. The legislation will promote both faster and freer public access by the public to Government files and records.

During our conference on this bill, I received a letter from President Ford voicing his concern over portions of our proposed amendments. He identified five specific problems, and at the next conference session the conferees discussed each problem and adopted language—either for the bill or for the statement of managers—designed to respond to those concerns. Last week I replied to the President's letter, along with House Conference Chairman WILLIAM MOORHEAD, observing that our legislation "would provide support for your own policy of 'open government' which is so desperately needed to restore the public's confidence in our National Government." I ask unanimous consent that President Ford's letter and our reply be printed in the RECORD at the end of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. KENNEDY. I believe it is significant to note that the conferees approached this legislative effort in a bipartisan spirit. We attempted to accommodate at each turn the needs of the Government agencies affected by our bill. I was pleased that each major issue requiring a final rollcall vote on the part of the Senate conferees was resolved by a unanimous vote. The participation of our ranking minority member, Senator HRUSKA, in the conference was most constructive, and his contributions extremely helpful. It is because of the active give and take of the conferees on both sides, with continued advice from the executive branch, that we achieved a final product that I believe can and should be enacted without delay.

I hope that our failure to get our senior minority members to sign the conference report does not reflect a decision on the part of the White House to veto this significant legislation. Openness is supposed to be the watchword of the present administration. So far, however, it has been more of a slogan than a practice. A veto of this bill would reflect a hostility to just the kind of Government openness and accountability which the public must have to regain a full measure of confidence in our National Government.

The legislation approved by our conference committee contains the following major provisions:

Federal courts are empowered to review the validity of agency classification of documents and may examine those documents in determining whether they were properly classified.

Individual Government officials who act arbitrarily or capriciously in withholding information from the public are subjected to disciplinary procedures, to be initiated by the Civil Service Commission.

Investigatory files, which are exempt from mandatory disclosure under present law, are required to be disclosed unless their release will cause some specific harm enumerated in the bill.

Agencies are given definite time limits to respond to requests for information: 10 days for an initial response, 20 days to determine an appeal, with an additional 10 days in unusual circumstances.

A person who must sue to obtain access to information may recover attorneys' fees if he prevails in court.

The Freedom of Information Act, passed by Congress in 1966, guaranteed the public judicially enforceable access to Government information, subject to specific exceptions defined in the law. Hearings before my Subcommittee on Administrative Practice and Procedure last year brought out numerous abuses by Government agencies in administering the act, and in October 1973 I introduced a bill to strengthen the Freedom of Information Act, which has in large part been incorporated into the final conference report filed today.

Our present legislative effort finds support from many quarters. Representatives of the media have strongly advocated adoption of these amendments. The American Bar Association has resolved that Congress move forward with the kinds of reforms contained in our legislation. The American Civil Liberties

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Marks, one of his secretaries.

APPROVAL OF BILL AND JOINT RESOLUTION

A message from the President of the United States stated that on October 1, 1974, he had approved and signed the following bill and joint resolution:

S. 3270. An act to amend the Defense Production Act of 1950 and to establish a National Commission on Supplies and Shortages.

S.J. Res. 244. A joint resolution to extend the termination date of the Export-Import Bank.

REPORT OF THE ECONOMIC STABILIZATION PROGRAM—MESSAGE FROM THE PRESIDENT

The ACTING PRESIDENT pro tempore (Mr. HUGHES) laid before the Senate a message from the President of the United States transmitting the final quarterly report of the economic stabilization program covering the first 3 months of 1974, and the month of April 1974, which, with the accompanying report, was referred to the Committee on Banking, Housing and Urban Affairs. The message is as follows:

To the Congress of the United States:

In accordance with section 216 of the Economic Stabilization Act of 1970, as amended, I am hereby transmitting to the Congress the final quarterly report of the Economic Stabilization Program. This report covers the first three months of 1974 as well as the month of April, 1974—the last month before legislative authority for the program expired.

When the Economic Stabilization Program was begun in 1971, President Nixon emphasized his hope that it would be temporary. This objective has now been met, as all mandatory wage and price controls have been lifted, except for those on petroleum which have been mandated separately by the Congress.

Looking back I believe this program gave all Americans a better appreciation of how powerful the forces of inflation are in our economy and how difficult it is to harness them. It also gave us convincing proof that wage and price controls are not the right way to solve the long-range problems of our economy. In retrospect this may have been the program's greatest lasting value.

GERALD R. FORD.

THE WHITE HOUSE, *October 1, 1974.*

MESSAGES FROM THE HOUSE

At 1:02 p.m., a message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the Speaker has affixed his signature to the following enrolled bills:

H.R. 15301. An act to amend the Railroad Retirement Act of 1937 to revise the retirement system for employees of employers covered thereunder, and for other purposes; and

H.R. 15323. An act to amend the Atomic Energy Act of 1954, as amended, to revise the method of providing for public remuneration in the event of a nuclear incident, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore.

At 3:20 p.m., a message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House has passed without amendment the following Senate bills and joint resolution:

S. 1276. An act for the relief of Joe H. Morgan;

S. 2337. An act for the relief of Dulce Pilar Castin (Castin-Casas);

S. 2382. An act for the relief of Caridad R. Balonan; and

S.J. Res. 192. A joint resolution to grant the status of permanent residence to Ivy May Glockner, formerly Ivy May Richmond nee Pond.

The message also announced that the House insists upon its amendments to the amendments of the Senate to the bill (H.R. 12628) to amend title 38, United States Code, to increase the rates of vocational rehabilitation, educational assistance, and special training allowances paid to eligible veterans and other persons; to make improvements in the educational assistance programs; and for other purposes, disagreed to by the Senate; agrees to the further conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. DORN, Mr. TEAGUE, Mr. HARVEY, Mr. DULSKI, Mr. HELSTOSKI, Mr. HAMMERSCHMIDT, Mrs. HECKLER of Massachusetts, Mr. ZWACH, and Mr. WYLIE, were appointed managers of the conference on the part of the House.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the ACTING PRESIDENT pro tempore (Mr. HUGHES):

A resolution adopted by the City Council of New Rochelle, N.Y., urging Congress to revise Daylight Saving Time. (Ordered to lie on the table.)

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore (Mr. HUGHES) laid before the Senate the following letters, which were referred as indicated:

REPORT OF THE SECRETARY OF DEFENSE

A letter from the Assistant Secretary of Defense transmitting, pursuant to law, a confidential report listing contracts pursuant to section 139 of title 10, United States Code (with an accompanying report). Referred to the Committee on Armed Services.

MILITARY PROCUREMENT ACTIONS FOR EXPERIMENTAL, DEVELOPMENTAL, TEST, OR RESEARCH WORK, JANUARY THROUGH JUNE 1974

A letter from the Acting Assistant Secretary of Defense (Installations and Logistics), transmitting, pursuant to law, listings of Department of Defense contracts negotiated during January–June 1974 (with accompanying documents). Referred to the Committee on Armed Services.

PROPOSED LEGISLATION TO AUTHORIZE DISPOSAL OF TIN, LEAD, AND SILVER FROM THE NATIONAL AND SUPPLEMENTAL STOCKPILES

A letter from the Administrator, General Services Administration, transmitting drafts of proposed legislation that will authorize disposal of tin, lead, and silver from the national and supplemental stockpiles (with accompanying papers). Referred to the Committee on Armed Services.

DEPARTMENT OF DEFENSE PROCUREMENT FROM SMALL AND OTHER BUSINESS FIRMS, JULY 1973–JUNE 1974

A letter from the Acting Assistant Secretary of Defense (Installations and Logistics), transmitting, pursuant to law, a report of Department of Defense Procurement from Small and Other Business Firms for July 1973–June 1974 (with an accompanying report). Referred to the Committee on Banking, Housing and Urban Affairs.

LOAN, GUARANTEE AND INSURANCE TRANSACTIONS SUPPORTED BY EXIMBANK TO YUGOSLAVIA, ROMANIA, THE UNION OF SOVIET SOCIALIST REPUBLICS, AND POLAND DURING JULY 1974

A letter from the President and Chairman, Export-Import Bank of the United States, reporting, pursuant to law, on loan, guarantee and insurance transactions supported by Eximbank to Yugoslavia, Romania, the Union of Soviet Socialist Republics, and Poland during July 1974. Referred to the Committee on Banking, Housing and Urban Affairs.

ELEVENTH ANNUAL REPORT OF COMSAT

A letter from the President, Communications Satellite Corporation, transmitting, pursuant to law, the eleventh annual report of the operations, activities and accomplishments of the Communications Satellite Corporation (COMSAT) (with an accompanying report). Referred to the Committee on Commerce.

PUBLICATION OF THE FEDERAL POWER COMMISSION

A letter from the Chairman of the Federal Power Commission transmitting for the information of the Senate a copy of the publication entitled "Environmental Research Task Force Report" (with an accompanying publication). Referred to the Committee on Commerce.

REPORT OF THE NATIONAL RAILROAD PASSENGER CORPORATION

A letter from the Vice President of the National Railroad Passenger Corporation transmitting, pursuant to law, a report on the operation of the Corporation for the month of August 1944 (with an accompanying report). Referred to the Committee on Commerce.

REPORT OF THE NATIONAL PROFESSIONAL STANDARDS REVIEW COUNCIL

A letter from the Secretary of Health, Education, and Welfare transmitting, pursuant to law, a report of the National Professional Standards Review Council (with an accompanying report). Referred to the Committee on Finance.

PROPOSED LEGISLATION BY THE DEPARTMENT OF STATE

A letter from the Assistant Secretary of State transmitting a draft of proposed legislation to authorize certain officers and employees of the Department of State and of the Foreign Service to carry firearms for the purpose of protecting designated individuals (with accompanying papers). Referred to the Committee on Foreign Relations.

REPORT OF THE INTERNATIONAL DEVELOPMENT AGENCY

A letter from the Assistant Administrator of the Agency for International Development transmitting, pursuant to law, the report of the Agency for the fiscal year 1974 (with an accompanying report). Referred to the Committee on Government Operations.

REPORT OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States transmitting, pursuant to law, a report entitled "Problems in Providing Education Overseas for Dependents of U.S. Personnel" (with an accompanying re-

Union has advocated adoption of this bill and has found it consistent with privacy rights which must also be protected. The American Federation of Government Employees has determined that the sanction provision is acceptable as fair and consistent with Civil Service safeguards. And the American Political Science Association has indicated the special interest of scholars in seeing this bill enacted.

These amendments to the Freedom of Information Act, contained in our conference report, will help open the decisions and actions of Government to the light of public review and understanding. Without them, the Freedom of Information Act will remain a toothless tiger, and the executive branch will continue to be able to delay, resist, and obstruct public access to Government information. With them, the Freedom of Information Act becomes truly worthy of its name.

EXHIBIT 1

THE WHITE HOUSE,
Washington, D.C., August 20, 1947.

DEAR TED: I appreciate the time you have given me to study the amendments to the Freedom of Information Act (H.R. 12471) presently before you, so that I could provide you my personal views on this bill.

I share your concerns for improving the Freedom of Information Act and agree that now, after eight years in existence, the time is ripe to reassess this profound and worthwhile legislation. Certainly, no other recent legislation more closely encompasses my objectives for open Government than the philosophy underlying the Freedom of Information Act.

Although many of the provisions that are now before you in Conference will be expensive in their implementation, I believe that most would more effectively assure to the public an open Executive branch. I have always felt that administrative burdens are not by themselves sufficient obstacles to prevent progress in Government, and I will therefore not comment on those aspects of the bill.

There are, however, more significant costs to Government that would be exacted by this bill—not in dollar terms, but relating more fundamentally to the way Government, and the Executive branch in particular, has and must function. In evaluating the costs, I must take care to avoid seriously impairing the Government we all seek to make more open. I am concerned with some of the provisions which are before you as well as some which I understand you may not have considered. I want to share my concerns with you so that we may accommodate our reservations in achieving a common objective.

A provision which appears in the Senate version of the bill but not in the House version requires a court, whenever its decision grants withheld documents to a complainant, to identify the employee responsible for the withholding and to determine whether the withholding was "without (a) reasonable basis in law" if the complainant so requests. If such a finding is made, the court is required to direct the agency to suspend that employee without pay or to take disciplinary or corrective action against him. Although I have doubts about the appropriateness of diverting the direction of litigation from the disclosure of information to career-affecting disciplinary hearing about employee conduct. I am most concerned with the inhibiting effect upon the vigorous and effective conduct of official duties that this potential personal liability will have upon employees responsible for the exercise of these judgments. Neither the best interests of Government nor the public would be served by subjecting an employee to this kind of personal liability for the performance of his official duties. Any potential harm to successful complainants is more appropriately rectified by the award of attorney fees to him. Furthermore, placing in the judiciary the requirement to initially determine the appropriateness of an employee's conduct and to initiate discipline is both unprecedented and unwise. Judgments concerning employee discipline must, in the interests of both fairness and effective personnel management, be made initially by his supervisors and judicial involvement should then follow in the traditional form of review.

There are provisions in both bills which would place the burden of proof upon an agency to satisfy a court that a document classified because it concerns military or intelligence (including intelligence sources and methods) secrets and diplomatic relations is, in fact, properly classified, following an *in camera* inspection of the document by the court. If the court is not convinced that the agency has adequately carried the burden, the document will be disclosed. I simply cannot accept a provision that would risk exposure of our military or intelligence secrets and diplomatic relations because of a judicially perceived failure to satisfy a burden of proof. My great respect for the courts does not prevent me from observing that they do not ordinarily have the background and expertise to gauge the ramifications that a release of a document may have upon our national security. The Constitution commits this responsibility and authority to the President.

I understand that the purpose of this provision is to provide a means whereby improperly classified information may be detected and released to the public. This is an objective I can support as long as the means selected do not jeopardize our national security interests. I could accept a provision with an express presumption that the classification was proper and with *in camera* judicial review only after a review of the evidence did not indicate that the matter had been reasonably classified in the interests of our national security. Following this review, the court could then disclose the document if it finds the classification to have been arbitrary, capricious, or without a reasonable basis. It must also be clear that this procedure does not usurp my Constitutional responsibilities as Commander-in-Chief. I recognize that this provision is technically not before you in Conference, but the differing provisions of the bills afford, I believe, grounds to accommodate our mutual interests and concerns.

The Senate but not the House version amends the exemption concerning investigatory files compiled for law enforcement purposes. I am concerned with any provision which would reduce our ability to effectively deal with crime. This amendment could have that effect if the sources of information or the information itself are disclosed. These sources and the information by which they may be identified must be protected in order not to severely hamper our efforts to combat crime. I am, however, equally concerned that an individual's right to privacy would not be appropriately protected by requiring the disclosure of information contained in an investigatory file about him unless the invasion of individual privacy is *clearly unwarranted*. Although I intend to take action shortly to address more comprehensively my concerns with encroachments upon individual privacy, I believe now is the time to preclude the Freedom of Information Act from disclosing information harmful to the privacy of individuals. I urge that you strike the words "clearly unwarranted" from this provision.

Finally, while I sympathize with an individual who is effectively precluded from exercising his right under the Freedom of Information Act because of the substantial costs of litigation, I hope that the amendments will make it clear that corporate interests will not be subsidized in their attempts to increase their competitive position by using this Act. I also believe that the time limits for agency action are unnecessarily restrictive in that they fail to recognize several valid examples of where providing flexibility in several specific instances would permit more carefully considered decisions in special cases without compromising the principle of timely implementation of the Act.

Again, I appreciate your cooperation in affording me this time and I am hopeful that the negotiations between our respective staffs which have continued in the interim will be successful.

I have stated publicly and I reiterate here that I intend to go more than halfway to accommodate Congressional concerns. I have followed that commitment in this letter, and I have attempted where I cannot agree with certain provisions to explain my reasons and to offer a constructive alternative. Your acceptance of my suggestions will enable us to move forward with this progressive effort to make Government still more responsive to the People.

Sincerely,

GERALD R. FORD.

FOREIGN OPERATIONS AND GOVERNMENT INFORMATION SUBCOMMITTEE,
Washington, D.C., September 23, 1974.

Hon. GERALD R. FORD,
President of the United States, The White House, Washington, D.C.

DEAR MR. PRESIDENT: We were most pleased to receive your letter of August 20 and to know of your personal interest in the amendments to the Freedom of Information Act being considered by the House-Senate conference committee. And we appreciate your recognition of the fundamental purposes of this milestone law and the importance you attach to these amendments. They of course would provide support for your own policy of "open government" which is so desperately needed to restore the public's confidence in our national government.

When we received your letter, all of the members of the conference committee agreed to your request for additional time to study the amendments and have given serious consideration and careful deliberation to your views on each of the major concerns you raised. The staffs of the two committees of jurisdiction have had several in-depth discussions with the responsible officials of your Administration. Individual Members have also discussed these points with Justice Department officials.

At our final conference session we were able to reopen discussion on each of the major issues raised in your letter. We believe that the ensuing conference actions on these matters were responsive to your concerns and were designed to accommodate further interests of the Executive branch.

You expressed concern in your letter about the constitutionality and wisdom of court-imposed penalties against Federal employees who withhold information "without a reasonable basis in law." This provision has been substantially modified by conference action.

At our last conference meeting, after extensive debate and consideration, a compromise sponsored by Representative McCloskey and modified by Senate conferees was adopted. This compromise leaves to the Civil Service Commission the responsibility for initiating disciplinary proceedings against a government official or employee in appropriate circumstances—but only after a written finding by the court that there were "circumstances surrounding the withholding (that) raise questions whether agency personnel

acted arbitrarily or capriciously with respect to the withholding." The actual disciplinary action recommended by the Commission, after completion of its standard proceedings, would actually be taken by the particular agency involved in the case.

We feel that this is a reasonable compromise that basically satisfies your objections to the original Senate language.

You expressed fear that the amendments afford inadequate protection to truly important national defense and foreign policy information subject to *in camera* inspection by Federal courts in freedom of information cases. We believe that these fears are unfounded, but the conference has nonetheless agreed to include additional explanatory language in the Statement of Managers making clear our intentions on this issue.

The legislative history of H.R. 12471 clearly shows that the *in camera* authority conferred upon the Federal courts in these amendments is *not mandatory, but permissive* in cases where normal proceedings in freedom of information cases in the courts do not make a clear-cut case for agency withholdings of requested records. These proceedings would include the present agency procedure of submitting an affidavit to the court in justification of the classification markings on requested documents in cases involving 552(b)(1) information.

The amendments in H.R. 12471 do not remove this right of the agency, nor do they change in any way other mechanisms available to the court during its consideration of the case. The court may still request additional information or corroborative evidence from the agency short of an *in camera* examination of the documents in question. Even when the *in camera* review authority is exercised by the court, it may call in the appropriate agency officials involved to discuss any portion of the information or affidavit furnished by the agency in the case.

The conferees have agreed to include language in the Statement of Managers that reiterates the discretionary nature of the *in camera* authority provided to the Federal courts under the Freedom of Information Act. We will also express our expectation that the courts give substantial weight to the agency affidavit submitted in support of the classification markings on any such documents in dispute.

Thus, Mr. President, we feel that the conference committee has made an effort to explain our intentions so as to respond to your objections on this important area of the amendments, operating as we must within the scope of the conference authority because of the virtually identical language in both the House and Senate versions of H.R. 12471.

The conference committee has also acted affirmatively to satisfy your major objections to the proposed amendments to subsection (b)(7) of the Freedom of Information Act, dealing with specific criteria for the withholding of Federal investigatory records in the law enforcement area.

The conference committee had already added an additional provision, not contained in the Senate-passed bill, which would permit withholding of information that would "endanger the life or physical safety of law enforcement personnel." This made it substantially identical to the language recommended by then Attorney General Richardson during Senate hearings on the bill and endorsed by the Administrative Law Section of the American Bar Association.

After reviewing the points made in your letter on this point, the conference committee also agreed to adopt language offered by Senator Hruska to permit the withholding of the *information* provided by a confidential source to a criminal law enforcement authority during the course of a criminal or "lawful national security intelligence investigation." The Federal agency may, in addition, withhold the identification of the confidential source in *all* law enforcement investigations—civil as well as criminal.

To further respond to your suggestion on the withholding of information in law enforcement records involving personal privacy the conference committee agreed to strike the word "clearly" from the Senate-passed language.

You expressed concern that the amendments to the Freedom of Information Law authorizing the Federal courts to award attorney fees and litigation costs not be used to subsidize corporate interests who use the law to enhance their own competitive position.

The members of the conference committee completely share your concern in this connection, and the Statement of Managers will reflect mutual view that any award of fees and costs by the courts should not be automatic but should be based on presently prevailing judicial standards, such as the general public benefit arising from the release of the information sought, as opposed to a more narrow commercial benefit solely to the private litigant.

You also suggest that the time limits in the amendments may be unnecessarily restrictive. The conference adopted at its first meeting the Senate language allowing agencies an additional ten days to respond to a request or determine an appeal in unusual circumstances. Pursuant to your suggestion we included language from the Senate version making clear that a court can give an agency additional time to review requested materials in exceptional circumstances where the agency has exercised due diligence but still could not meet the statutory deadlines.

In conclusion, Mr. President, we appreciate your expression of cooperation with the Congress in our deliberations on the final version of this important legislation. In keeping with your willingness "to go more than halfway to accommodate Congressional concerns", we have given your suggestions in these five key areas of the bill renewed consideration and, we feel, have likewise gone "more than halfway" at this late stage.

We welcome your valuable input into our final deliberations and appreciate the fine cooperation and helpful suggestions made by various staff members and officials of the Executive branch. It is our hope that the fruits of these joint efforts will make it possible for the Senate and House to act promptly on the conference version of H.R. 12471 so that this valuable legislation will be enacted and can be signed into law before the end of the month.

With every good wish,

Sincerely,

EDWARD M. KENNEDY,
Chairman, Senate Conferees.
WILLAM S. MOORHEAD,
Chairman, House Conferees.

EXECUTIVE REPORTS OF COMMITTEES

As in executive session, the following executive reports of committees were submitted:

By Mr. HASKELL, from the Committees on Commerce and Interior and Insular Affairs:

Lynn Adams Greenwalt, of Maryland, to be Director of the U.S. Fish and Wildlife Service.

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. METCALF (for himself and Mr. MANSFIELD):

S. 4066. A bill to provide for the study of certain lands to determine their suitability for designation as wilderness in accordance with the Wilderness Act of 1964, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. JAVITS:

S. 4067. A bill to establish a Capital Markets Advisory Committee. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. CURTIS (for himself, Mr. HRUSKA, Mr. FANNIN, Mr. BARTLETT, and Mr. TOWER):

S. 4068. A bill to amend the Food Stamp Act of 1964. Referred to the Committee on Agriculture and Forestry.

By Mr. GRAVEL:

S. 4069. A bill to require that a preference be afforded to local residents in employment on certain Federal projects or federally assisted or regulated projects in areas with substantial unemployment, and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. STEVENS:

S. 4070. A bill to revise retirement benefits for certain employees of the Bureau of Indian Affairs and the Indian Health Service not entitled to Indian preference, provide greater opportunity for advancement and employment of Indians, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. McCLURE:

S. 4071. A bill to provide for the establishment of the Hagerman Fossil Beds National Monument in the State of Idaho, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. STENNIS:

S. 4072. A bill to authorize the Secretary of the Army to return the remains of 2d Lieutenant John A. Ellard, Jr., from the Manila American Cemetery, Republic of the Philippines, to the United States. Referred to the Committee on Armed Services.

CORRECTION OF THE RECORD

Mr. HANSEN. Mr. President, on September 30, 1974, I introduced S. 4060, a bill to amend section 206 of the Federal Water Pollution Control Act. In my statement introducing this bill I inadvertently misstated a date. I would like to take this opportunity to point out this error to my colleagues and correct the RECORD.

On page 17646, third column, first full paragraph, 11th line, the year "1972," should read "1971."

I ask for unanimous consent that the correct date appear in the permanent record.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By MR. METCALF (for himself and Mr. MANSFIELD):

S. 4066. A bill to provide for the study of certain lands to determine their suitability for designation as wilderness in accordance with the Wilderness Act of 1964, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

intent of the original Congressional personnel restriction. The Committee believes that by limiting the number of Americans in Cambodia the degree of American involvement in Cambodian affairs can be more effectively controlled and, thus limits can be put on Cambodia's dependence upon the U.S. Government. It is now evident that the Committee underestimated the energy and resourcefulness of 200 Executive Branch representatives in Phnom Penh.

While reducing the level of U.S. personnel in Cambodia, particularly the military, the Committee also adopted an amendment offered by Senators Case, Symington, and Humphrey, designed to encourage expansion of private relief activities in Cambodia. At present these are being carried out almost exclusively by American voluntary nonprofit organizations and by the International Committee of the Red Cross. The Committee has been informed that these organizations are willing to expand their operations in order to meet the increasing humanitarian needs of the Cambodian people. In order to do so, however, the relief organizations need U.S. funds to support their personnel since they have now reached the limit of their own resources. To date, AID has been unwilling to provide personnel support funds to the relief agencies since, if it did so, the personnel supported would be subject to the personnel ceilings. The Committee questions the appropriateness of the Embassy's decision to give priority in its personnel allocations to military personnel, who now account for 124 of the authorized total of 200, rather than to increasing the number working on relief programs.

The new subsection (h) carries over the provision from subsection 655(g) which states that the section shall not be construed as a commitment by the United States to defend Cambodia.

Subsection (b) of section 25 repeals sections 655 and 656 of the Foreign Assistance Act since they will become obsolete upon the enactment of this act.

Section 26. Limitations with respect to Laos

Section 26 will enact a new section 808 to the Foreign Assistance Act of 1961 which will establish a ceiling on and specify the distribution of United States assistance to Laos for fiscal year 1975. Subsection (a) of the new section 808 imposes a ceiling of $100,000,000 on obligations for the purpose of providing military and economic assistance to Laos in fiscal year 1975. Under the ceiling, $55,000,000 is allowed for military assistance and $45,000,000 is allowed for economic assistance, which is allocated into four categories. The table below provides comparative data on assistance for Laos.

ASSISTANCE TO LAOS

[In millions of dollars]

	Estimate, fiscal year 1974	Executive branch request, fiscal year 1975	Committee recommendation, fiscal year 1975
Laos:			
Military assistance	[1] 81.0	[2] 90.9	[3] 55.0
General economic assistance (ESR)	40.6	55.2	45.0
Public Law 480	3.6	.3	
Total, Laos	125.2	146.4	100.0

[1] New obligational authority and excess defense articles.
[2] Military assistance service funded.
[3] Includes supply operations and excess defense articles.

Four categories of assistance authorized for Laos are: humanitarian; reconstruction and development; stabilization; and technical support. For these categories the Committee recommends the following:

ECONOMIC ASSISTANCE CATEGORIES, LOSS

	Executive branch request	Committee recommendation
1. Humanitarian	15,300,000	$13,000,000
2. Reconstruction and development	22,400,000	9,900,000
3. Stabilization	17,500,000	17,500,000
4. Technical support	(6,300,000)	4,600,000
Total	55,200,000	45,000,000

The Committee has not reduced the Lao program in proportion to other Indochina programs. Laos alone among the Indochina states has reached a political settlement and the Lao people deserve encouragement and assistance in making their government work. The amount approved reflects the limit of what they can effectively absorb. It will not be sufficient, however, to sustain Vientiane society in the manner to which it became accustomed in the days of the massive American presence. The reduction made in the Lao program came primarily out of "reconstruction" where AID requested $11 million to build two dikes, neither of which required any dollar inputs. The AID request for dollars for this purpose appeared to be but an effort to obtain additional free foreign exchange for Laos from the Congress.

United States policy in Laos is designed to facilitate the establishment of peace and national reconciliation. To this end, United States assistance must operate within the terms of the agreements on a cease-fire and a coalition government signed by the Laotian parties in February and September, 1973. Since that latter agreement establishes a Provisional Government of National Union, American aid should be channeled to the extent possible through that government. Also, insofar as is possible, U.S. programs for humanitarian assistance, recontruction, and development should be available to all areas of Laos and should be directed wherever the need is greatest and the assistance desired.

The new subsection (b) prohibits transfer of economic assistance funds authorized for Laos for use as military assistance. Military assistance funds may be transferred to and used in the economic assistance categories in accordance with the new section 809. There shall be no transfers of funds between the four economic assistance categories.

The new subsection (c) through (f) relate to implementation of this ceiling for Laos, and are identical to those explained in the analysis of section 806.

The new subsection (g) states that the new section shall not be construed as a commitment by the United States to defend Laos.

Section 27. Transfer of Funds

Section 27 adds a new section 809 to the Foreign Assistance Act.

Subsection (a) prohibits use of the transfer authority of section 610 of the Act to add to, or take away from, the funds appropriated for assistance to South Vietnam, Cambodia, or Laos.

Subsection (b), initiated by Senator Case, provides that any funds made available for military assistance for South Vietnam, Laos, or Cambodia may be used for war relief, reconstruction, or general economic development purposes.

FREEDOM OF INFORMATION ACT AMENDMENTS—CONFERENCE REPORT

Mr. KENNEDY. Mr. President, I submit a report of the committee of conference on H.R. 12471, and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated by title.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 12471) to amend section 522 of the United States Code, known as the Freedom of Information Act, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

There being no objection, the Senate proceeded to consider the report.

(The conference report is printed in the House proceedings of the CONGRESSIONAL RECORD of September 25, 1974, at page H9525.)

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

Mr. HRUSKA. Mr. President, as a conferee on this bill, I have seen several significant changes made to the bill which, in my view, makes it a more workable measure. However, I do not believe that these corrections go far enough.

While we were in conference, the President sent a letter to the conferees pointing out his objections to the bill. The provision that appears to concern the executive branch the most is the section of the bill that places the burden of proof upon an agency to satisfy a court that a document because it concerns military or intelligence secrets and diplomatic relations is in fact properly classified. If the court is not convinced that the agency has adequately carried the burden, the document will be disclosed.

Yet, while this bill transfers the authority to declassify documents from the executive branch to the courts, it provides no standards to goven the review of the documents. The judge is given the documents and then is cast upon a sea without any lighthouses or buoys to point out the shoals and rocks to make his decision whether the documents are properly classified.

No standards are created to guide a judge in reviewing the documents. He can release the documents if, in his own view, they are not properly classified, even if the Secretary of State, the Secretary of Defense, or any other agency head certifies that the documents are properly classified. This is a provision that is not only distrustful in nature; it is unreasonable.

President Ford, in his letter to the conferees cited these concerns and said:

I simply cannot accept a provision that would risk exposure of our military or intelligence secrets and diplomatic relations because of a judicially perceived failure to satisfy a burden of proof. My great respect for the courts does not prevent me from observing that they do not ordinarily have the background and expertise to gauge the ramifications that a release of a document may have upon our national security. The Constitution commits this responsibility and authority to the President.

Despite these strong words and valid concerns, the majority of the conferees

refused to change the provision vesting a power in the courts to declassify documents classified by a Government agency.

Mr. President, I realize that there are some mistakes in judgment about classification and that there are some abuses of the system. But there are administrative procedures for dealing with these mistakes and abuses. If a citizen wants access to a classified document, he may request declassification under Executive Order 11652. If his request for declassification is refused, he may appeal to the head of the agency. If his request is again refused, he can appeal to the Interagency Classification Review Committee—a committee designed to correct erroneous classifications and in general, be a watchdog over the classification system.

This bill, however, ignores this administrative mechanism and vests in the courts the power to declassify documents and release them to all the world.

The President, in his letter to the conferees, said that he could not accept a provision that would risk exposure of our national defense or foreign relations secrets. I cannot accept such a provision either.

Mr. President, I ask unanimous consent that the text of President Ford's August 20 letter be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,
Washington, Aug. 20, 1974.

Senator EDWARD KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR TED: I appreciate the time you have given me to study the amendments to the Freedom of Information Act (H.R. 12471) presently before you, so that I could provide you my personal views on this bill.

I share your concerns for improving the Freedom of Information Act and agree that now, after eight years in existence, the time is ripe to reassess this profound and worthwhile legislation. Certainly, no other recent legislation more closely encompasses my objectives for open Government than the philosophy underlying the Freedom of Information Act.

Although many of the provisions that are now before you in Conference will be expensive in their implementation, I believe that most would more effectively assure to the public an open Executive branch. I have always felt that administrative burdens are not by themselves sufficient obstacles to prevent progress in Government, and I will therefore not comment on those aspects of the bill.

There are, however, more significant costs to Government that would be exacted by this bill—not in dollar terms, but relating more fundamentally to the way Government, and the Executive branch in particular, has and must function. In evaluating the costs, I must take care to avoid seriously impairing the Government we all seek to make more open. I am concerned with some of the provisions which are before you as well as some which I understand you may not have considered. I want to share my concerns with you so that we may accommodate our reservations in achieving a common objective.

A provision which appears in the Senate version of the bill but not in the House version requires a court, whenever its decision grants withheld documents to a complainant, to identify the employee responsible for the withholding and to determine whether the withholding was "without (a) reasonable basis in law" if the complainant so requests. If such a finding is made, the court is required to direct the agency to suspend that employee without pay or to take disciplinary or corrective action against him.

Although I have doubts about the appropriateness of diverting the direction of litigation from the disclosure of information to career-affecting disciplinary hearings about employee conduct, I am most concerned with the inhibiting effect upon the vigorous and effective conduct of official duties that this potential personal liability will have upon employees responsible for the exercise of these judgments. Neither the best interests of Government nor the public would be served by subjecting an employee to this kind of personal liability for the performance of his official duties.

Any potential harm to successful complainants is more appropriately rectified by the award of attorney fees to him. Furthermore, placing in the judiciary the requirement to initially determine the appropriateness of an employee's conduct and to initiate discipline is both unprecedented and unwise. Judgments concerning employee discipline must, in the interests of both fairness and effective personnel management, be made initially by his supervisors and judicial involvement should then follow in the traditional form of review.

There are provisions in both bills which would place the burden of proof upon an agency to satisfy a court that a document classified because it concerns military or intelligence (including intelligence sources and methods) secrets and diplomatic relations is, in fact, properly classified, following an in camera inspection of the document by the court.

If the court is not convinced that the agency has adequately carried the burden, the document will be disclosed. I simply cannot accept a provision that would risk exposure of our military or intelligence secrets and diplomatic relations because of a judicially perceived failure to satisfy a burden of proof.

My great respect for the courts does not prevent me from observing that they do not ordinarily have the background and expertise to gauge the ramifications that a release of a document may have upon our national security.

The Constitution commits this responsibility and authority to the President. I understand that the purpose of this provision is to provide a means whereby improperly classified information may be detected and released to the public. This is an objective I can support as long as the means selected do not jeopardize our national security interests. I could accept a provision with an express presumption that the classification was proper and with *in camera* judicial review only after a review of the evidence did not indicate that the matter had been reasonably classified in the interests of our national security.

Following this review, the court could then disclose the document if it finds the classification to have been arbitrary, capricious, or without a reasonable basis. It must also be clear that this procedure does not usurp my Constitutional responsibilities as Commander-in-Chief. I recognize that this provision is technically not before you in Conference, but the differing provisions of the bills afford, I believe, grounds to accommodate our mutual interests and concerns.

The Senate but not the House version amends the exemption concerning investigatory files compiled for law enforcement purposes. I am concerned with any provision which would reduce our ability to effectively deal with crime. This amendment could have that effect if the sources of information or the information itself are disclosed. These sources and the information by which they may be identified must be protected in order not to severely hamper our efforts to combat crime.

I am, however, equally concerned that an individual's right to privacy would not be appropriately protected by requiring the disclosure of information contained in an investigatory file about him unless the invasion of individual privacy is clearly unwarranted. Although I intend to take action shortly to address more comprehensively my concerns with encroachments upon individual privacy, I believe now is the time to preclude the Freedom of Information Act from disclosing information harmful to the privacy of individuals. I urge that you strike the words "clearly unwarranted" from this provision.

Finally, while I sympathize with an individual who is effectively precluded from exercising his right under the Freedom of Information Act because of the substantial costs of litigation, I hope that the amendments will make it clear that corporate interests will not be subsidized in their attempts to increase their competitive position by using this Act. I also believe that the time limits for agency action are unnecessarily restrictive in that they fail to recognize several valid examples of where providing flexibility in several specific instances would permit more carefully considered decisions in special cases without compromising the principle of timely implementation of the Act.

Again, I appreciate your cooperation in affording me this time and I am hopeful that the negotiations between our respective staffs which have continued in the interim will be successful.

I have stated publicly and I reiterate here that I intend to go more than halfway to accommodate Congressional concerns. I have followed that commitment in this letter, and I have attempted where I cannot agree with certain provisions to explain my reasons and to offer a constructive alternative. Your acceptance of my suggestions will enable us to move forward with this progressive effort to make Government still more responsive to the People.

Sincerely,

GERALD FORD.

AMENDMENT OF THE NATIONAL BANK ACT, THE FEDERAL DEPOSIT INSURANCE ACT, AND THE NATIONAL HOUSING ACT

Mr. TOWER. Mr. President, I ask unanimous consent that the Senate reconsider the vote by which S. 3817, a bill to amend the National Bank Act, the Federal Deposit Insurance Act, the National Housing Act, the Small Business Investment Act, and for other purposes, was passed.

Inadvertently when the bill was passed, the last page was left off and the bill passed without opposition. It has been agreed to. It does affect interest rates in three States, Montana, Tennessee and Arkansas, so it is not controversial.

Mr. HUMPHREY. Was this matter cleared with the majority?

Mr. TOWER. This was cleared with the distinguished Senator from Montana who has a personal interest in the matter.

Mr. HUMPHREY. I know he has a very important public interest in that matter.

Mr. TOWER. It has been cleared with the committee.

Mr. ROBERT C. BYRD. Would the Senator include in his unanimous-consent request that the bill be returned to second reading, the amendment adopted,

H. vote on
[illegible]
no part

Approved For Release 2005/06/09 : CIA-RDP75B00380R000700010005-3

Under present law—16 United States Code 715s—all revenues received by the Secretary of the Interior from the sale or other disposition of animals, timber, hay, grass, or other products of the soil, minerals shells, sand, or gravel, from other privileges, or from leases from public accommodations or facilities incidental to, but not in conflict with, the basic purposes for which those areas of the National Wildlife System were established are required to be covered into a separate fund in the U.S. Treasury. At the end of each fiscal year, the Secretary is required to pay out of the net receipts in the fund—which funds are to be expended solely for the benefit of public schools and roads—as follows: First, to each county in which reserved public lands are situated, an amount equal to 25 percent of the net receipts from such reserved public lands in that particular area; and second, to each county in which lands are situated which have been acquired in fee, either three-fourths of 1 percent of the cost of the area, or 25 percent of the net receipts from such area, whichever is greater. All moneys remaining in the fund after payments to the counties are used by the Secretary for management of areas within the System and for enforcement of the Migratory Bird Treaty Act.

The Senate amended H.R. 11541 to provide that any excess receipts—after payment to counties—would be earmarked for the Migratory Bird Conservation Fund for land acquisition, the theory being that these funds would be used to replace lands that are being utilized for purposes other than for which they were intended. In the future, the Secretary would be required to obtain funds with which to manage the areas within the System and enforce the Migratory Bird Treaty Act through regular appropriation channels.

In fact, it was brought out by Interior witnesses at my subcommittee hearings on the predecessor legislation that by fiscal year 1977 revenue sharing to the counties will gradually increase because of the requirement under present law of adjusting the cost of acquiring lands within the System at 5-year intervals—and the Department will have to resort to the appropriation process for such funds during fiscal year 1977. It is anticipated that after fiscal year 1976 there will be no excess receipts, which currently amount to approximately $1 million per year.

Mr. Speaker, I would like to make it clear—and this is consistent with the language in the Senate report—that in transferring these excess receipts to the Migratory Bird Conservation Fund this action in no way negates or lessens the responsibility of the Department of the Interior to come forward and obtain through the regular appropriation process the funds that would be necessary for it to carry out its functions and responsibilities to enforce the Migratory Bird Treaty Act and to manage the National Wildlife Refuge System.

Mr. Speaker, I do not want the Members to think that I am advocating an increase in the sale and utilization of the various resources within the System as a way of obtaining additional revenues for this fund, but we have to find some permanent source—other than appropriations—for acquiring wildlife habitat in the future. The main source for such acquisitions at the present and, as a matter of fact, in the foreseeable future is from duck stamp sales which are running about $12 million per year. After fiscal year 1976, when three-fourths of such receipts will be used to pay off the loan under the Wetlands Accelerated Acquisition Act—which amounts to approximately $85 million at this time—there will only be about $3 to $4 million remaining to be used for acquisition purposes.

Mr. Speaker, in view of the present energy crisis and the demands being made upon these Federal areas, one of these days mineral receipts from refuges may run into the millions annually, and this would appear to be a good time to earmark this possible source of revenue for land acquisition. I congratulate the Senate for adding this provision to the bill.

Mr. Speaker, I think this is a good piece of legislation and one that is greatly needed. The House considered this legislation earlier in the year at which time it passed by Voice Vote under Suspension of the Rules. I ask the House once again to declare its support for this measure.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The Senate amendment was concurred in.

A motion to reconsider was laid on the table.

FREEDOM OF INFORMATION ACT AMENDMENTS

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I call up the conference report on the bill (H.R. 12471) to amend section 552 of title 5, United States Code, known as the Freedom of Information Act, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of September 25, 1974.)

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, since the text of the conference report has been printed with the amendment and also printed in the CONGRESSIONAL RECORD of Wednesday, September 25, 1974, I ask unanimous consent that the statement of the managers be considered as read.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I yield myself such time as I may consume.

(Mr. MOORHEAD of Pennsylvania asked and was given permission to revise and extend his remarks and include extraneous matter.)

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, on March 14 of this year this important bill to make a number of needed procedural and substantive amendments to the Freedom of Information Act of 1966 was considered by the House and passed by the overwhelming vote of 383 to 8. A Senate version of the bill was considered by that body and passed on May 30 by a vote of 64 to 17. The Senate bill contained several amendments not previously considered by the House, two of which were of considerable significance. One dealt with the imposition of administrative sanctions against Government officials or employees for the improper withholding of information under the law and the second amendment tightens loopholes in the exemption dealing with law enforcement records. There were also a number of important differences in language between the two bills on amendments contained in both the House and Senate versions.

The conference committee met on four separate occasions to resolve differences between the House and Senate bills, reaching final agreement on August 21, except for minor technical changes in language that were resolved after the Labor Day congressional recess. Mr. Speaker, I will now indicate the major changes in the House bill that have resulted from the conference:

First, the conference version directs each Federal agency to issue regulations covering the direct costs of searching for and duplicating records requested under the Freedom of Information Act. It also provides that an agency may waive the fees if it determines that it would be in the public interest.

Second, the Senate bill contained a provision authorizing Federal courts—in Freedom of Information Act cases—to impose a sanction of up to 60-days suspension from employment against a Federal official or employee which the court found to have been responsible for withholding the requested records without "reasonable basis in law." This amendment, the most controversial part of the conference committee's deliberations, was opposed by many House conferees on the grounds that it gave the court such unusual disciplinary powers over Federal employees. After extensive discussion over 3 days of meetings, the conferees reached a reasonable compromise—if the court finds for the plaintiff and against the Government and awards attorney fees and court costs, and if the court makes a written finding that circumstances surrounding the withholding raise questions whether the Federal agency personnel acted "arbitrarily or capriciously," the Civil Service Commission must initiate a proceeding to determine whether or not disciplinary action is warranted against the responsible Federal official or employee. The Civil Service Commission would then investigate the circumstances, may hold hearings, and otherwise proceed in accordance with regular civil service proce-

dures. The employee has full rights of due process and the right to appeal any adverse finding by the Commission. If the Commission's decision is against the Federal official or employee, it would submit its findings and disciplinary recommendations for suspension to the affected agency, which would then impose the suspension recommended by the Commission.

Mr. Speaker, there has been some misunderstanding about this sanction provision and I trust that this explanation will help clarify our intent. I seriously doubt that such procedures will actually be invoked except in unusual circumstances. Its inclusion in the law will make it crystal clear that Congress expects that this law be strictly adhered to by all Federal agency personnel and that withholding of Government records be only when clearly authorized by one of the nine exemptions contained in the freedom of information law.

Mr. Speaker, at this point in the RECORD, I would like to include a letter sent to all members of the conference committee by Mr. John A. McCart, operations director of the AFL–CIO Government Employees Council in which his organization—representing some 30 unions and 1.5 million Federal and postal employees—endorses the compromise sanction provisions contained in this bill:

GOVERNMENT EMPLOYEES
COUNCIL—AFL–CIO,
Washington, D.C., September 10, 1974.

Hon. WILLIAM MOORHEAD,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN MOORHEAD: Because of your membership on the conference committee on H.R. 12471 (Freedom of Information Act Amendments), we believe you will be interested in the views of our organization on the provision affecting Federal officers and employes in connection with alleged violations. Thirty AFL–CIO unions representing more than 1.5 million Federal and postal workers comprise the Council.

Our concern with the original language in the measure is that it permitted Federal courts to impose administrative penalties on employes where violations were confirmed by the courts. This arrangement would deprive postal and Federal employes of due process permitted under existing laws governing disciplinary actions. Moreover, the language could open lower level employes to court imposed discipline, even though they were acting in keeping with instructions from higher level officials.

Section A 4(f) of the measure agreed to by the conferees on August 21 is much less onerous. In cases where Federal courts find a violation exists and believe disciplinary action may be justified, the matter will be referred to the Civil Service Commission for processing through the employing agency. Under this procedure, we assume employes will be entitled to the appellate rights normally available in current statutes applicable to the Federal service.

The Council urges acceptance of the conference agreement of August 21.

Respectfully yours,

JOHN A. MCCART,
Operations Director.

TEXT OF M'CART LETTER

Finally, Mr. Speaker, another provision of the Senate bill, not previously considered by the House but included in the conference bill, is an amendment to section 552(b)(7), the exemption in the law dealing with law enforcement records. Under recent court decisions, the language of the present law has been interpreted as almost a blanket exemption against the disclosure of any "law enforcement files," even if they have long-since lost any requirement for secrecy.

The bill now contains modified language of the amendment sponsored by the Senator from Michigan, Mr. HART, and adopted in that body by a vote of 51 to 33, which tightens up the loopholes of the seventh exemption by providing six specific areas of criteria under which agency withholding of information is permitted. Certain of these criteria were the subject of compromise language to accommodate unusual requirements of some agencies such as the Federal Bureau of Investigation.

Mr. Speaker, before yielding to other members of the committee, I would like to refer briefly to communications between the conference committee on this legislation and President Ford. During the meetings of the committee and only a few days after his swearing in, President Ford requested a delay in our proceedings to give him an opportunity to study the bill and agreements already reached by the conferees. We unanimously agreed to this request. On August 20, President Ford sent a letter to the conference committee setting forth his views in four major areas—sanctions, the in camera review language that was virtually identical in both House and Senate bills, the law enforcement exemption amendment, and the provision for discretionary award by the courts of attorney fees and court costs to successful Freedom of Information Act plaintiffs.

Mr. Speaker, the conferees seriously considered each of the points made by President Ford in his letter and have gone "more than halfway" to accommodate his views. We modified the sanction provision of the bill. We included language on the in camera review part of the conference report to clarify congressional intent along the lines he suggested. We modified two provisions of the law enforcement exemption language to meet points he raised. We had already acted to clarify our intent that corporate interests not be subsidized by the award of attorney fees and court costs in freedom of information cases. The conference committee made every effort to cooperate with the President in our consideration of this measure and feel that we have acted responsibly to deal with each of the questions he raised in his letter. I ask unanimous consent to insert in the RECORD at this point the text of President Ford's letter to me, dated August 20, 1974, and the text of the responsive letter from Senator KENNEDY and myself, dated September 23, 1974, which sets forth conference action on each of the major points he raised:

THE WHITE HOUSE,
Washington, D.C., August 20, 1974.

Hon. WILLIAM S. MOORHEAD,
House of Representatives,
Washington, D.C.

DEAR BILL: I appreciate the time you have given me to study the amendments to the Freedom of Information Act (H.R. 12471) presently before you, so that I could provide you my personal views on this bill.

I share your concerns for improving the Freedom of Information Act and agree that now, after eight years in existence, the time is ripe to reassess this profound and worthwhile legislation. Certainly, no other recent legislation more closely encompasses my objectives for open Government than the philosophy underlying the Freedom of Information Act.

Although many of the provisions that are now before you in Conference will be expensive in their implementation, I believe that most would more effectively assure to the public an open Executive branch. I have always felt that administrative burdens are not by themselves sufficient obstacles to prevent progress in Government, and I will therefore not comment on those aspects of the bill.

There are, however, more significant costs to Government that would be exacted by this bill—not in dollar terms, but relating more fundamentally to the way Government, and the Executive branch in particular, has and must function. In evaluating the costs, I must take care to avoid seriously impairing the Government we all seek to make more open. I am concerned with some of the provisions which are before you as well as some which I understand you may not have considered. I want to share my concerns with you so that we may accommodate our reservations in achieving a common objective.

A provision which appears in the Senate version of the bill but not in the House version requires a court, whenever its decision grants withheld documents to a complainant, to identify the employee responsible for the withholding and to determine whether the withholding was "without [a] reasonable basis in law" if the complainant so requests. If such a finding is made, the court is required to direct the agency to suspend that employee without pay or to take disciplinary or corrective action against him.

Although I have doubts about the appropriateness of diverting the direction of litigation from the disclosure of information to career-affecting disciplinary hearings about employee conduct, I am most concerned with the inhibiting effect upon the vigorous and effective conduct of official duties that this potential personal liability will have upon employees responsible for the exercise of these judgments. Neither the best interests of Government nor the public would be served by subjecting an employee to this kind of personal liability for the performance of his official duties. Any potential harm to successful complainants is more appropriately rectified by the award of attorney fees to him. Furthermore, placing in the judiciary the requirement to initially determine the appropriateness of an employee's conduct and to initiate discipline is both unprecedented and unwise. Judgments concerning employee discipline must, in the interests of both fairness and effective personnel management, be made initially by his supervisors and judicial involvement should then follow in the traditional form of review.

There are provisions in both bills which would place the burden of proof upon an agency to satisfy a court that a document classified because it concerns military or intelligence (including intelligence sources and methods) secrets and diplomatic relations is, in fact, properly classified, following an *in camera* inspection of the document by the court. If the court is not convinced that the agency has adequately carried the burden, the document will be disclosed. I simply cannot accept a provision that would risk exposure of our military or intelligence secrets and diplomatic relations because of a judicially perceived failure to satisfy a burden of proof. My great respect

for the courts does not prevent me from observing that they do not ordinarily have the background and expertise to gauge the ramifications that a release of a document may have upon our national security.

The Constitution commits this responsibility and authority to the President. I understand that the purpose of this provision is to provide a means whereby improperly classified information may be detected and released to the public. This is an objective I can support as long as the means selected do not jeopardize our national security interests. I could accept a provision with an express presumption that the classification was proper and with *in camera* judicial review only after a review of the evidence did not indicate that the matter had been reasonably classified in the interests of our national security. Following this review, the court could then disclose the document if it finds the classification to have been arbitrary, capricious, or without a reasonable basis. It must also be clear that this procedure does not usurp my Constitutional responsibilities as Commander-in-Chief. I recognize that this provision is technically not before you in Conference, but the differing provisions of the bills afford, I believe, grounds to accommodate our mutual interests and concerns.

The Senate but not the House version amends the exemption concerning investigatory files compiled for law enforcement purposes. I am concerned with any provision which would reduce our ability to effectively deal with crime. This amendment could have that effect if the sources of information or the information itself are disclosed. These sources and the information by which they may be identified must be protected in order not to severely hamper our efforts to combat crime. I am, however, equally concerned that an individual's right to privacy would not be appropriately protected by requiring the disclosure of information contained in an investigatory file about him unless the invasion of individual privacy is *clearly unwarranted*. Although I intend to take action shortly to address more comprehensively my concerns with encroachments upon individual privacy, I believe now is the time to preclude the Freedom of Information Act from disclosing information harmful to the privacy of individuals. I urge that you strike the words "clearly unwarranted" from this provision.

Finally, while I sympathize with an individual who is effectively precluded from exercising his right under the Freedom of Information Act because of the substantial costs of litigation, I hope that the amendments will make it clear that corporate interests will not be subsidized in their attempts to increase their competitive position by using this Act. I also believe that the time limits for agency action are unnecessarily restrictive in that they fail to recognize several valid examples of where providing flexibility in several specific instances would permit more carefully considered decisions in special cases without compromising the principle of timely implementation of the Act.

Again, I appreciate your cooperation in affording me this time and I am hopeful that the negotiations between our respective staffs which have continued in the interim will be successful.

I have stated publicly and I reiterate here that I intend to go more than halfway to accommodate Congressional concerns. I have followed that commitment in this letter, and I have attempted where I cannot agree with certain provisions to explain my reasons and to offer a constructive alternative. Your acceptance of my suggestions will enable us to move forward with this progressive effort to make Government still more responsive to the People.

Sincerely,

GERALD R. FORD.

WASHINGTON, D.C.,
September 23, 1974.

Hon. GERALD R. FORD,
President of the United States, The White House, Washington, D.C.

DEAR MR. PRESIDENT: We were most pleased to receive your letter of August 20 and to know of your personal interest in the amendmetns to the Freedom of Information Act being considered by the House-Senate conference committee. And we appreciate your recognition of the fundamental purposes of this milestone law and the importance you attach to these amendments. They of course would provide support for your own policy of "Open government" which is so desperately needed to restore the public's confidence in our national government.

When we received your letter, all of the members of the conference committee agreed to your request for additional time to study the amendments and have given serious consideration and careful deliberations to your views on each of the major concerns you raised. The staffs of the two committees of jurisdiction have had several in-depth discussions with the responsible officials of your Administration. Individual Members have also discussed these points with Justice Department officials.

At our final conference session we were able to reopen discussion on each of the major issues raised in your letter. We believe that the ensuing conference actions on these matters were responsive to your concerns and were designed to accommodate further interests of the Executive Branch.

You expressed concern in your letter about the constitutionality and wisdom of court-imposed penalties against Federal employees who withhold information "without a reasonable basis in law." This provision has been substantially modified by conference action.

At our last conference meeting, after extensive debate and consideration, a compromise sponsored by Representative McCloskey and modified by Senate conferees was adopted. This compromise leaves to the Civil Service Commission the responsibility for initiating disciplinary proceedings against a government official or employee in appropriate circumstances—but only after a written finding by the court that there were "circumstances surrounding the withholding (that) raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding." The actual disciplinary action recommended by the Commission, after completion of its standard proceedings, would actually be taken by the particular agency involved in the case.

We feel that this is a reasonable compromise that basically satisfies your objections to the original Senate language.

You expressed fear that the amendments afford inadequate protection to truly important national defense and foreign policy information subject to *in camera* inspection by Federal courts in freedom of information cases. We believe that these fears are unfounded, but the conference has nonetheless agreed to include additional explanatory language in the Statement of Managers making clear our intentions on this issue.

The legislative history of H.R. 12471 clearly shows that the *in camera* authority conferred upon the Federal courts in these amendments is *not mandatory, but permissive* in cases where normal proceedings in freedom of information cases in the courts do not make a clear-cut case for agency withholdings of requested records. These proceedings would include the present agency procedure of submitting an affidavit to the court in justification of the classification markings on requested documents in cases involving 552(b)(1) information.

The amendments in H.R. 12471 do not remove this right of the agency, nor do they change in any way other mechanisms available to the court during its consideration of the case. The court may still request additional information or corroborative evidence from the agency short of an *in camera* examination of the documents in question. Even when the *in camera* review authority is exercised by the court, it may call in the appropriate agency officials involved to discuss any portion of the information or affidavit furnished by the agency in the case.

The conferees have agreed to include language in the Statement of Managers that reiterates the discretionary nature of the *in camera* authority provided to the Federal courts under the Freedom of Information Act. We will also express our expectation that the courts give substantial weight to the agency affidavit submitted in support of th classification markings on any such documents in dispute.

Thus, Mr. President, to feel that the conference committee has made an effort to explain our intentions so as to respond to your objections on this important area of the amendments, operating as we must within the scope of the conference authority because of the virtually identical language in both the House and Senate versions on H.R. 12471.

The conference committee has also acted affirmatively to satisfy your major objections to the proposal amendment to subsection (b)(7) of the Freedom of Information Act, dealing with specific criteria for the withholding of Federal investigatory records in the law enforcement area.

The conference committee had already added an additional provision, not contained in the Senate-passed bill, which would permit withholding of information that would "endanger the life or physical safety of law enforcement personnel." This made it substantially identical to the language recommended by then Attorney General Richardson during Senate hearings on the bill and endorsed by the Administrative Law Section of the American Bar Association.

After reviewing the points made in your letter on this point, the conference committee also agreed to adopt language offered by Senator Hruska to permit the withholding of the *information* provided by a confidential source to a criminal law enforcement authority during the course of a criminal or "lawful national security intelligence investigation." The Federal agency may, in addition, withhold the identification of the confidential source in *all* law enforcement investigations—civil as well as criminal.

To further respond to your suggestion on the withholding of information in law enforcement records involving personal privacy the conference committee agreed to strike the word "clearly" from the Senate-passed language.

You expressed concern that the amendments to the Freedom of Information Law authorizing the Federal courts to award attorney fees and litigation costs not be used to subsidize corporate interests who use the law to enhance their own competitive position.

The members of the conference committee completely share your concern in this connection, and the Statement of Managers will reflect mutual view that any award of fees and costs by the courts should not be automatic but should be based on presently prevailing judicial standards, such as the general public benefit arising from the release of the information sought, as opposed to a more narrow commercial benefit solely to the private litigant.

You also suggest that the time limits in the amendments may be unnecessarily restrictive. The conference adopted at its first meeting the Senate language allowing agencies an additional ten days to respond to a request or determine an appeal in unusual circumstances. Pursuant to your suggestion we included language from the Senate version making clear that a court can give an agency additional time to review requested

materials in exceptional circumstances where the agency has exercised due diligence but still could not meet the statutory deadlines.

In conclusion, Mr. President, we appreciate your expression of cooperation with the Congress in our deliberations on the final version of this important legislation. In keeping with your willingness "to go more than halfway to accommodate Congressional concerns", we have given your suggestions in these five key areas of the bill renewed consideration and, we feel, have likewise gone "more than halfway" at this late stage.

We welcome your valuable input into our final deliberations and appreciate the fine cooperation and helpful suggestions made by various staff members and officials of the Executive branch. It is our hope that the fruits of these joint efforts will make it possible for the Senate and House to act promptly on the conference version of H.R. 12471 so that this valuable legislation will be enacted and can be signed into law before the end of the month.

With every good wish,

Sincerely,

EDWARD M. KENNEDY,
Chairman, Senate Conferees.
WILLIAM S. MOORHEAD,
Chairman, House Conferees.

Mr. Speaker, our committee has worked for more than 3 years in investigations, studies, legislative hearings, and careful drafting of this legislation to strengthen and improve the operation of the Freedom of Information Act. It has been passed by overwhelming votes in both the House and Senate. The conferees have labored hard and long to reconcile the differences between the two versions of the bill and have arrived at reasonable compromises on each of the major issues in dispute. We have a good bill. We have a fair and workable bill that will plug major loopholes in the present Freedom of Information Law.

In remarks soon after he took office, President Ford pledged to the American people an "open Government." Enactment of these amendments to the freedom of information law and their prompt signing into law will be the important first step toward the achievement of this badly needed objective of "open Government" and a restoration of the faith of the American public in the institution of government—faith that has been so seriously eroded over the last several years.

In conclusion, Mr. Speaker, I would like to call attention to the language of the statement of managers on page 15 of House Report No. 1320 which clarifies the intent of Congress with respect to the impact of this legislation on the Corporation for Public Broadcasting. The gentleman from California (Mr. VAN DEERLIN) raised such questions during a colloquy when the bill was debated last March. This language makes it clear that the definition of "agency" for purposes of Freedom of Information Act matters does not include the Corporation for Public Broadcasting.

I had sought assurance that CPB would follow the open government principles of the Freedom of Information Act in its information activities—even though they were not specifically covered by that act—so as to serve the public interest. I am pleased that CPB has reaffirmed that position in correspondence with me. At this point in the RECORD I include two letters from Mr. Henry Loomis, president of CPB, in which he sets forth such assurances:

CORPORATION FOR
PUBLIC BROADCASTING,
Washington, D.C., September 23, 1974.

Hon. WILLIAM S. MOORHEAD,
Chairman, Subcommittee on Foreign Operations and Government Information, Washington, D.C.

DEAR MR. MOORHEAD: On behalf of the Board and Management of the Corporation for Public Broadcasting, I wish to congratulate you and the House Conferees on the Freedom of Information amendments (HR 12471) recently reported by the Conferees. We believe the amendments serve a very real public need and will, when implemented, reward the wisdom and dedication of the House Members in the Freedom of Information area. We are most encouraged by the recognition, in the Conference Reports, of CPB's unique status as a private, nonprofit corporation dedicated to the purposes set out in the Public Broadcasting Act of 1967.

The Conferees' generous and statesmanlike response to CPB's comments on the pending legislation prompt us to reaffirm CPB's traditional commitment to freedom of information principles, and to pledge fullest implementation of these principles in CPB's operations, consistent with its private status and constitutionally protected activities in the area of broadcast program support. You have our full assurance of CPB's continued dedication to the spirit of the Freedom of Information Act.

Sincerely,

HENRY LOOMIS.

CORPORATION FOR
PUBLIC BROADCASTING,
Washington, D.C.

Hon. WILLIAM MOORHEAD,
House of Representatives,
Washington, D.C.

DEAR MR. MOORHEAD: In my letter to you of September 23, it was my pleasure to reaffirm CPB's "fullest implementation of freedom of information principles in CPB's operations, consistent with its private status and constitutionally protected activities in the area of broadcast program support."

In order to add some specifics to that general commitment, I should like to describe current CPB practices regarding the dissemination of information relating to CPB activities, and regarding requests for information about CPB activities from the press and the public.

All of CPB's public information activities are coordinated by our Office of Public Affairs. The Office of Public Affairs is located at the Corporation for Public Broadcasting, 888 16th Street, N.W., Washington, D.C. 20006 Phone (202) 293-6160).

This office publishes the following informational documents relating to CPB activities:

(1) The Annual Report of the Corporation for Public Broadcasting which represents "a comprehensive and detailed report of the Corporation's operations, activities, financial condition, and accomplishments . . . [including] such recommendations as the Corporation determines appropriate", required by the public Broadcasting Act of 1967, as amended, (47 U.S.C. 396(i)). This report is submitted to the President for transmittal to the Congress on or before the 31st day of December of each year. After transmittal to the Congress it is available to all who request it from the CPB Public Affairs Office.

(2) The CPB *Report*, a weekly newsletter containing reports of official CPB Board and Management actions and activities, as well as additional information of interest to public broadcasting stations, viewers, listeners, and citizens.

(3) Press releases, containing official reports and statements of the CPB Board and management. Such releases are issued from time to time as, in the opinion of the Public Information Office, they are required.

(4) CPB testimony before legislative, oversight, and appropriations committees and subcommittees of the U.S. Congress. These comprehensive statements on CPB activities, financial conditions, projects, and accomplishments are routinely duplicated for convenient public access by request to the Public Affairs Office. In addition, these statements, together with the transcripts of questions and answers before Congressional committees are routinely published and available as Congressional documents.

(5) Technical studies, final grant reports, etc. From time to time, the Corporation commissions research and development or other projects that result in the presentation of reports, monographs, statistical compilations, and other written materials of interest to the public broadcasting community or the public at large. The availability of all these materials is noted in the CPB Annual Report, CPB *Reports*, or CPB press releases. Copies of these materials are available upon request at the Public Affairs Office (in limited numbers).

Requests for information or documents coming to CPB employees from the press, the general public or others not dealing with CPB in its business operations are routinely referred to the Public Affairs Office. It is the practice of the Corporation to provide information specifically requested in every instance in which furnishing such information will not:

(1) divulge confidential personnel information regarding individual employees without their consent; or

(2) divulge financial or trade secret data acquired from any person under a promise of confidence; or

(3) impair CPB ability to:

(a) conduct its activities free from the "extraneous interference and control" Congress sought to bar in authorizing establishment of CPB as a private nongovernment corporation [47 U.S.C. 396(a)(6)];

(b) "carry out its purposes and functions and engage in its activities in ways that will most effectively assure the maximum freedom of the noncommercial educational television or radio broadcast systems and local stations from interference with or control of program content or other activities." [47 U.S.C. 396(g)(1)(D)];

(c) avoid ". . . any direction, supervision, or control of educational broadcasting; or over the charter or bylaws of the Corporation; or over the curriculum, program of construction, or personnel of any educational institution, school system, or educational broadcasting station or system" by "any department, agency, officer, or employee of the U.S. . . ." [47 U.S.C. 398]; or

(d) conduct its activities as a private, "nonprofit corporation . . . which will not be an agency or establishment of the United States Government." [47 U.S.C. 396(b)]; or

(4) otherwise compromise the constitutionally protected activities of the Corporation, stations, or systems, in the broadcast program area.

I am sure you will recognize that CPB's practices regarding public access to CPB information are consistent with, and in a number of instances, actually exceed principles of access applicable to government agencies under the Freedom of Information Act and the amendments recently considered by House and Senate conferees. I stress again that CPB's voluntary commitment to freedom of information principles is a continuing one, limited only by the sensitive nature of some of its functions. I doubt that you will find another private corporation so committed to public understanding of its work and activities.

Sincerely,

HENRY LOOMIS.

Mr. SEIBERLING. Mr. Speaker, will the gentleman yield?

Mr. MOORHEAD of Pennsylvania. I yield to the gnetleman from Ohio.

Mr. SEIBERLING. Mr. Speaker, on a matter of such importance, particularly in the light of what we have gone through this year with respect to Watergate, I would hope we could have enough order so that all Members of the House who are interested in this can hear what the gentleman is saying.

If I may proceed just a little further, in my mind the whole conspiracy aspect of Watergate was made possible because of the abuses of the power of people in the executive branch to keep matters secret. The distinguished gentleman from Pennsylvania is talking about what the conferees have done to remedy this situation. I think we deserve to understand exactly what the conferees did.

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, the gentleman is entirely correct. That is the thrust of the legislation as passed by this body and passed by the other body and reported back through conference.

The other major change in the bill was tightening up loopholes on public access to law enforcement records, and I think the conferees have reached a very good compromise which we can endorse to all the Members of the House.

Mr. ALEXANDER. Mr. Speaker, will the gentleman yield?

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I now yield to the able gentleman from Arkansas (Mr. ALEXANDER) a member of our Foreign Operations and Government Information Subcommittee, who has made such a significant contribution to this legislation as a House conferee.

Mr. ALEXANDER. Mr. Speaker, I note that section 3 of this act requires each agency to file an annual report with the Speaker of the House and the President pro tempore of the Senate. These annual reports are to contain specific information as enumerated in the act. Following this enumeration there is a requirement that the "Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year" certain information regarding litigation brought under the Freedom of Information Act, as well as a description of action taken by the Department of Justice to encourage compliance with the act.

Is it the intent of this section that the Department of Justice file two annual reports?

Mr. MOORHEAD of Pennsylvania. The answer is yes. The Department of Justice, as an agency, just as any other agency, is required to file an annual report containing specific activities of the Department of Justice in complying with the requests under the Freedom of Information Act; to wit, that additionally the Attorney General is required to file a second report dealing with the activities of the Department of Justice in its role as legal counsel to all of the other agencies under the Freedom of Information Act.

(Mr. ALEXANDER asked and was given permission to revise and extend his remarks.)

Mr. ALEXANDER. Mr. Speaker, truth is the foundation of democracy. Thomas Jefferson said:

Whenever the people are well-informed, they can be trusted with their government, because whenever things get so far wrong to attract their notice, they can be relied on to set them right.

Our democracy is based on truth. Our Declaration of Independence declares that all men are created equal, and that we are endowed with the unalienable right of liberty; that to secure our liberty we established a representative democracy; and that our Government derives its powers from the consent of the governed.

But, the very survival of democracy depends on an informed citizenry. Therefore, if we are to survive as a free nation, we must not tolerate deception in government. If the basis of government is the consent of the governed from which it derives its just powers; then, clearly, unjust powers of government can also be consented to by the governed.

But, once the consent to unjust power is given, liberty can soon be replaced by tyranny. And, once tyranny is established, it no longer matters whether the governed consent, or not.

That's why government deception supported by official secrecy causes Americans to become frustrated, powerless, and dissatisfied with elected officials.

Our action here today in adopting the conference report on the Freedom of Information Act Amendments may prove to be one of the most significant steps we have taken in returning the U.S. Government to the hands of the American people. Unfortunately, our action did not come early enough to prevent the scandals which have rocked the Nation in the last year and which have rallied all people behind the cause of open government.

For although the people of this country have the power to go to the polls to record their wishes, they are denied the information with which to make wise decisions. Over the years, as our bureaucracy has expanded unchecked, a curtain of secrecy has fallen over its operations, a curtain only slightly less penetrable than the one which surrounds the Communist bloc.

Since the enactment of the first housekeeping statutes under George Washington for the purpose of allowing department heads to adopt regulations governing the custody, use, and preservation of official Government documents, the executive branch has become more and more effective in twisting these laws into an excuse for hiding information and documents from the American people.

Why do we have this secrecy in Government? In many instances, it appears that it is simpler for our Government officials to have a "secret" stamp on hand than to go to the trouble of digging up the information to answer a lot of questions. This same "secret" stamp makes it easier to hide the errors of judgment and the favors of politics which could be damaging to the men in control.

I have read reports of some pretty absurd uses of our information classification system. For instance, during the Korean war, the Department of Labor would not give out the details of the armed services purchase of peanut butter, contending that a clever enemy could deduce from these purchases the approximate number of men in the services. Yet at the same time the Department of Defense was releasing mimeographed sheets with a breakdown of the exact number of men in the Army, Navy, and Air Force.

Things have not improved much over the years, I am afraid, even though the passage of the 1967 Freedom of Information Act was a giant step in returning to the public access to their own public documents.

And although in the 1970's I am not really concerned with supplies of peanut butter, I am most concerned with the price and availability of the bread it is spread on and the effect that the sale of grain and wheat to Russia has had on its cost to the American consumer.

Now let me briefly outline the difficulties I have had in my unsuccessful efforts to obtain information on this deal.

In the fall of 1973, I began an extensive investigation of the transactions behind the Russian grain deal. As a Member of Congress and as a member of the Intergovernmental Relations Subcommittee of the Committee on Government Operations—the committee charged with the investigative powers of the House of Representatives—I sought information on the wheat subsidies paid to each exporting company since July 8, 1972. I also requested information on the status and background of the investigation being conducted by the Department of Justice on the alleged Kansas City Wheat Market price fixing by certain individuals or grain companies. I made my requests through communications with Secretary of Agriculture Earl Butz, ASCS Administrator Kenneth Frick, Acting Attorney General Robert Bork, FBI Director Clarence Kelly, the Commodity Exchange Authority, and Assistant Attorney General Henry E. Peterson.

In each case, I was told that the information I requested was either not available or that it could not be made available to me. I was told that the FBI could not release the details of the investigation and that we must rely on the FBI's judgment that there had not been any illegal activities connected with the sale.

The investigations were secret, but it was no secret that bread prices were higher and the American people were not ready to accept such a decision from the FBI without having access to the facts that would back up such a judgment.

As long as a man is informed, he can usually take action to insure that his other rights are not violated. If, I as a Member of Congress and the Government Operations Committee, who works daily with the bureaucracy, become frus-

trated when I am denied access to information vital to the public welfare, what about John Q. Citizen and his efforts to get the information he needs?

In conclusion, let me relate one more "horror" story. In 1971, a public interest group asked the Department of Agriculture for some information on pesticides. The Department told them they had have to be a little more specific as to what they wanted.

The group asked the Department for their index of files on pesticides so that they could specifically state the information needed. In response to this request, USDA not only denied them access to the index, stating that the index itself was a secret, but also restated their refusal to release the information on pesticides without the appropriate index number. Fortunately this particular group had the resources to go to court and sue for the information, which the court ordered released.

However, the case did not end here. Undaunted, USDA replied that they would be glad to release a copy of the information, but it would cost $91,000 and take a year and a half to get it together.

The group again went to court where USDA was told by the court to stop fooling around and release the information that was requested.

I shudder to think of the amount of time, energy, and money wasted in this process.

The enactment of these amendments to the Freedom of Information Act will put an end to the ridiculous delays, excuses, and bureaucratic runarounds which have denied U.S. citizens their "right to know" and made Americans a captive of their own Government.

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. MOORHEAD of Pennsylvania. I yield to the gentleman from Iowa.

Mr. GROSS. Are the amendments adopted by the conference germane to the bill?

Mr. MOORHEAD of Pennsylvania. In my opinion they are.

Mr. YOUNG of Florida. Mr. Speaker, will the gentleman yield?

Mr. MOORHEAD of Pennsylvania. I yield to the gentleman from Florida.

Mr. YOUNG of Florida. Can the gentleman tell us what happens to the provision in the bill where certain judges were permitted to make national security determinations?

Mr. MOORHEAD of Pennsylvania. Yes. The bill contains the requirement, which is in the House bill, that, where there is a stamp, a classification stamp, the court could go behind that, but we specified that the court should give great weight to an affidavit by the Department that this was properly classified. What we are trying to overrule is the situation described in the famous Mink case, where the court said to the Congress, no matter how frivolous or capricious the classification should be, that the court could not go behind it.

Mr. ERLENBORN. Mr. Speaker, I yield myself 5 minutes.

(Mr. ERLENBORN asked and was given permission to revise and extend his remarks.)

Mr. ERLENBORN. Mr. Speaker, I rise in support of the conference report on H.R. 12471, the Freedom of Information Act amendments.

Mr. Speaker, this bill passed with a rather overwhelming vote in the House, and there were only a few questions to be adjusted by the House and the Senate. These amendments to the Freedom of Information Act I think are those that all Members can support. We are acting at this time in a way that is consonant with the times, and that is making information more readily available from the Government to members of the general public.

One of the questions that was raised in the conference, and was most difficult to resolve, was the question of an amendment proposed by the other body. It was incorporated in the bill as passed by the other body and would have allowed a sanction to be imposed by the court against Government employees who are found to have refused to give information to someone who requested it without—and I quote—"a reasonable basis in the law."

I objected to this provision. I think it would have been an unconscionable burden on Government employees. I am happy to report that a compromise was adopted by the conference, one that I am not totally happy with, but I think it does improve the provision to the point where I can support the conference report.

As a matter of fact, the provision that is now in the bill is one that, in my judgment, could never result in the imposition of a sanction against a Federal employee.

The conferees agreed to change the test to that of an employee acting arbitrarily and capriciously rather than just without a reasonable basis in law. As a matter of fact, before the case ever gets to court, the employee who refuses to give information when a demand is made will have to have been supported by his superior. There will have had to have been an administrative appeal within the agency.

In most agencies this would mean that the general counsel of the agency would support the decision of the employee, and then the case would have to be brought to court by the one who was seeking the information. The Attorney General or the general counsel of the agency would then have to make a decision at that point that the case is sufficiently meritorious to defend. Then possibly the court might find the agency to be wrong, but I think in that circumstance the court could hardly find that the employee who has been sustained all the way along the line had acted arbitrarily or capriciously. Therefore, though we do have a provision in here for a sanction, it is limited to a case where there is action which is found by the court to be arbitrary and capricious.

The court would not make a determination as to the sanction, but would then certify the matter to the Civil Service Commission. The Civil Service Commission would be required to institute a proceeding.

I find that rather interesting, by the way: Proceeding.

I asked the principal sponsor of the Senate provision, Senator KENNEDY of Massachusetts, what a proceeding was. He was unable in conference to define it. It is neither defined in the Civil Service law, nor is it defined in the Freedom of Information Act. What kind of proceeding is intended by the compromise of the conferees is really rather vague. Whether the employee would be entitled to counsel and whether there would have to be a public hearing are things which really are rather vague. However, because I expect this provision never to be utilized, I do not think it makes a great deal of difference.

Besides this provision, which was controversial, there are other noncontroversial provisions, some that I think are great advances in the law.

First of all, this does allow a court to review what could, and sometimes, I am sure, in the past, has been an arbitrary decision to classify a document for security reasons. This would not require the court to view the material, but would allow the court—and we make this clear in the conference report—allow the court to look at the affidavits from the affected agency, whether the Department of State or the Defense Department or other, and give great weight to these affidavits.

At that point only, if there was still a question remaining in the mind of the court, the court could conduct an in-camera inspection of the material and see whether it had been properly classified within the terms of the Executive order setting forth the procedure for classification.

The SPEAKER. The time of the gentleman has expired.

Mr. ERLENBORN. Mr. Speaker, I yield myself 1 additional minute.

Only then would the court have an opportunity to view the material and make a determination as to whether it had been properly classified.

In addition, for those who think that the law has not been applied as it ought to have been in the past, there is one further provision of the act which I think is very helpful. Those who have been denied information when they have made a demand under the law, and then go to court to prove that their demand was meritorious, the court can—is not required to, but can—award attorney's fees and court costs to the successful litigant.

I think that, on balance, the bill as reported by the conference is a good bill. I was happy to sign the conference report.

I hope that it will be adopted.

The SPEAKER. The time of the gentleman from Illinois has expired.

Mr. ERLENBORN. Mr. Speaker, I yield 5 minutes to the gentleman from New York (Mr. HORTON).

(Mr. HORTON asked and was given permission to revise and extend his remarks.)

Mr. HORTON. Mr. Speaker, I rise in support of the conference report on H.R. 12471, the Freedom of Information Act Amendments of 1974.

Before becoming ranking minority member of the Government Operations Committee, I was a member of the subcommittee which has jurisdiction over this legislation. In that capacity, I have

studied for several years how the Freedom of Information Act works and how it can be improved.

Let me assure you that the measure before us today will strengthen the public's right to know what its Government is doing. By strengthening the public's right to know, we make democracy work better. That is an objective we should all support wholeheartedly.

H.R. 12471 eases public access to Government information in several constructive ways. It requires agencies to publish indexes of documents, respond more quickly to requests for data, and submit annual reports to the Congress on their performance under this act. It grants individuals access to material they can reasonably describe—rather than identify with particularity—more prompt resolution of lawsuits they file under the freedom of information law, and an award of attorney fees—at the courts' discretion—in cases in which they substantially prevail. In addition, this bill makes clear that courts have the discretion to examine in chambers all contested records—including classified material—before deciding whether it is properly exempt from public disclosure.

Mr. Speaker, my dedication to freedom of information remains firm. I think the conference report before us is an improvement over the present law in this area. I urge my colleagues to join me in supporting this legislation.

Mr. Speaker, I would like to ask the gentleman from Pennsylvania some questions about section 2 of this bill. Section 2(a) amends paragraph (1) of 5 U.S.C. 552(b) to exempt from the requirements of the Freedom of Information Act matters which are—

(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order.

When coupled with section 552(a)(4)(B), as amended in this bill, this provision would permit a court to look behind the security classification given to a document by an agency to determine whether the document was properly classified. This provision is not intended to permit a court free rein to classify information as it wishes, is it?

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, if the gentleman will yield, it certainly is not.

First of all, a court could only determine whether the information was "properly classified pursuant to (an) Executive order." In other words, the judge would have to decide whether the document met the criteria of the President's order for classification—not whether he himself would have classified the document in accordance with his own ideas of what should be kept secret. Second, as we have said in the joint explanatory statement of the committee of conference:

The conferees expect that Federal courts, in making de novo determinations in section 552(b)(1) cases under the Freedom of Information law, will accord substantial weight to an agency's affidavit concerning the details of the classified status of the disputed record.

Mr. HORTON. I would like to move now to section 2(b) of the bill. That section rewrites the subsection of the Freedom of Information Act which exempts certain law enforcement records from disclosure to the public. The new language exempts "investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would—among other things—disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducing a lawful national security intelligence investigation, confidential information furnished only by the confidential source."

I would ask the gentleman two questions about this provision. First, with regard to the phrase "a lawful national security intelligence investigation," exactly what types of investigations does that encompass?

Mr. MOORHEAD of Pennsylvania. Let me quote to the gentleman from the joint explanatory statement of the committee on conference. That statement says:

The term "intelligence" in (the) section (we are discussing) is intended to apply to positive intelligence-gathering activities, counter-intelligence activities, and background security investigations by governmental units which have authority to conduct such functions.

Mr. HORTON. So it would apply to more than just positive intelligence activities?

Mr. MOORHEAD of Pennsylvania. Yes. It would also apply to counter-intelligence activities and background security investigations.

Mr. HORTON. But it would not apply to investigations which were labeled "national security" but in reality had nothing to do with that subject matter?

Mr. MOORHEAD of Pennsylvania. No, it would not. The national security intelligence investigation must be "lawful" for information compiled in the course of it to be exempted from disclosure under the Freedom of Information Act.

Mr. HORTON. My second question is, this bill exempts from public disclosure confidential information furnished by a confidential source in the course of a criminal investigation if the records were compiled by "a criminal law enforcement authority" and the same kind of information given for a lawful national security intelligence investigation if the records were compiled by "an agency." By using the term "criminal law enforcement authority" in one place and "an agency" in another, does this provision mean that the two terms are mutually exclusive, and that as a result, confidential information compiled by a criminal law enforcement authority in the course of a national security investigation would not be exempt from public disclosure?

Mr. MOORHEAD of Pennsylvania. No. Again, let me quote from the statement of managers:

By "an agency" the conferees intend to include criminal law enforcement authorities as well as other agencies.

All agencies—criminal law enforcement authorities as well as others—could properly withhold confidential information compiled for a lawful national security intelligence investigation.

Mr. HORTON. Mr. Speaker, I thank the gentleman for his lucid explanations and commend him for the interpretations of the bill which he has given.

I would like to make a separate point with regard to the conference report. Section (1)(b)(2) writes into the Freedom of Information Act a requirement that fees charged by agencies for performing services under the act "shall be limited to reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such search and duplication."

Some question has arisen as to the meaning in this provision of the term "document search." As the ranking minority House member of the committee of conference, I wish to express my opinion that this term means not just a search for documents, but also a search within documents to determine which specific portions are subject to public disclosure and which are exempt from the provisions of the act. It does not encompass a review by agency lawyers or policymaking or other personnel to determine general rules which they or other employees later follow in deciding which specific portions are exempt from disclosure.

Let me cite just one example of how the conferee, in my judgment, mean that this distinction should be applied. Suppose someone requested the FBI to provide all documents in its possession relating to investigations of the Communist Party of the United States. The FBI estimates that it has 2 million pages of such documents. The Bureau's lawyers would first have to review samples of this material to formulate guidelines for other personnel to use in applying the exemptions of the act to the entire group of papers. The Agency could not charge fees for this examination. Then the other personnel would search through the documents, page by page, to determine which portions could be made public and which could not. This action would be subject to fees under the act.

The FBI has estimated that the page-by-page search through the documents would consume 225 man-years. Even if each employee participating in the search was paid only $10,000 per year, the cost of responding to this one request would be more than $2 million. The committee report on the House bill estimated the cost of the entire bill as $100,000 per year; the report on the similar Senate bill estimated the cost as $40,000 annually. Surely, the committee on conference could not have intended that agency expenses in searching through documents to comply with requirements of the law not be reimbursable. If that were the case, the conferees would have written a bill which would entail expenditures for responding to one request more than 20 times greater than the annual expense of the more costly of the two similar bills they were reconciling.

Mr. Speaker, I thank the gentleman for this time and yield back to him.

Mr. ERLENBORN. Mr. Speaker, I yield such time as he may consume to the gentleman from Nebraska (Mr. THONE).

(Mr. THONE asked and was given permission to revise and extend his remarks.)

Mr. THONE. Mr. Speaker, I rise in support of the conference report on H.R. 12471. This bill amends the Freedom of Information Act of 1966 in several ways, all of them designed to increase the public's access to Government information. As one who has fought for openness in Government for many years, first in Nebraska and now in the Congress, I am proud to add my support to that of other Members advocating passage of this conference report.

Mr. Speaker, I would point in particular to provisions of this legislation which require agencies to respond to requests promptly and actually reimburse some successful plaintiffs who bring suit under the law. Section 1(c) of the measure provides that agencies must respond to requests for information within 10 days, and decide on appeals of decisions to withhold data within 20 additional days. These time limits could be extended only in unusual circumstances defined in the bill, and then only for 10 days. This provision will cure the unfortunate tendency which we have noted in some agencies to delay responding to citizen requests. Section 1(a) permits judges to assess attorney fees against the Government in cases in which complaints substantially prevail. This would surely discourage agencies from keeping matters secret unless they are quite convinced that withheld information would be within the law.

In these ways as in others, this bill represents a great step forward for freedom of information. I strongly support H.R. 12471.

Mr. THOMPSON of New Jersey. Mr. Speaker, as a cosponsor of the original bill that was acted upon earlier this session, I am pleased to support the conference report on H.R. 12471. In many ways it is a stronger and more comprehensive Freedom of Information measure than the bill we passed in March by an overwhelming 383 to 8 vote. I commend the House conferees for their insistence on the basic principles of the House version during the conference deliberations and for their wisdom in accepting several important provisions added by the other body. This is an important bill that will make the Freedom of Information law more effective, more workable, and vastly more meaningful in advancing the public's "right to know" about the affairs of our Federal Government.

During the debate on H.R. 12471 last March, I stated that—

> Government secrecy for the purposes of hiding wrongdoing, inept leadership, or bureaucratic errors undermines and can eventually destroy our system of representative government.

Since then, we have seen dramatic evidence of the effects of government secrecy, and the corruption it produced, as a result of disclosures during the impeachment proceedings of the Judiciary Committee. This legislation, when signed into law, will be the first major step forward in helping to restore the confidence of the American people in the institutions of government by purging the body politic of the secrecy excesses which marked the sordid Watergate coverup during the Nixon administration.

Mr. Speaker, I urge the House to adopt this conference report adding these significant strengthening amendments to the Freedom of Information Act.

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I have no further requests for time.

Mr. ERLENBORN. Mr. Speaker, I have no further requests for time.

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER. The question is on the conference report.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. ANNUNZIO. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 349, nays 2, not voting 83, as follows:

[Roll No. 574]

YEAS—349

Abdnor	Butler	Eilberg
Abzug	Byron	Erlenborn
Addabbo	Camp	Esch
Alexander	Carney, Ohio	Eshleman
Anderson, Calif.	Casey, Tex.	Evans, Colo.
	Cederberg	Fascell
Anderson, Ill.	Chamberlain	Fish
Andrews, N.C.	Chappell	Fisher
Andrews, N. Dak.	Chisholm	Flood
	Clancy	Flowers
Annunzio	Clark	Flynt
Arends	Clausen, Don H.	Foley
Ashbrook		Ford
Ashley	Cleveland	Forsythe
Aspin	Cochran	Fountain
Badillo	Collier	Fraser
Bafalis	Collins, Ill.	Frelinghuysen
Baker	Collins, Tex.	Frenzel
Barrett	Conlan	Frey
Bauman	Conte	Froehlich
Beard	Corman	Fulton
Bennett	Cotter	Fuqua
Bergland	Coughlin	Gaydos
Bevill	Crane	Gettys
Biaggi	Cronin	Gibbons
Biester	Culver	Gilman
Bingham	Daniel, Dan	Ginn
Boggs	Danielson	Goldwater
Boland	Davis, Ga.	Gonzalez
Bolling	Davis, S.C.	Goodling
Bowen	Davis, Wis.	Gray
Brademas	de la Garza	Green, Oreg.
Bray	Delaney	Green, Pa.
Breaux	Dellenback	Griffiths
Breckinridge	Dellums	Gross
Brinkley	Denholm	Grover
Brooks	Dennis	Gubser
Broomfield	Dent	Gude
Brotzman	Derwinski	Gunter
Brown, Calif.	Devine	Guyer
Brown, Ohio	Dickinson	Haley
Broyhill, N.C.	Dingell	Hamilton
Broyhill, Va.	Donohue	Hanley
Buchanan	Downing	Hanrahan
Burgener	Drinan	Hansen, Wash.
Burke, Fla.	Dulski	Harrington
Burke, Mass.	Duncan	Harsha
Burlison, Mo.	du Pont	Hastings
Burton, John	Edwards, Ala.	Hawkins
Burton, Phillip	Edwards, Calif.	Hechler, W. Va.
Heckler, Mass.	Moakley	Sisk
Heinz	Mollohan	Skubitz
Helstoski	Montgomery	Slack
Henderson	Moorhead, Calif.	Smith, Iowa
Hicks		Smith, N.Y.
Hillis	Moorhead, Pa.	Spence
Hogan	Morgan	Staggers
Holifield	Mosher	Stanton, J. William
Holt	Moss	
Holtzman	Murphy, Ill.	Stanton, James V.
Horton	Murphy, N.Y.	
Howard	Myers	Stark
Huber	Natcher	Steed
Hungate	Nedzi	Steiger, Ariz.
Hutchinson	Nichols	Steiger, Wis.
Ichord	Nix	Stephens
Jarman	Obey	Stokes
Johnson, Calif.	O'Brien	Stubblefield
Johnson, Pa.	O'Hara	Stuckey
Jones, Ala.	Owens	Studds
Jones, N.C.	Parris	Sullivan
Jones, Tenn.	Passman	Talcott
Jordan	Patman	Taylor, N.C.
Karth	Patten	Thompson, N.J.
Kastenmeier	Perkins	Thomson, Wis.
Kazen	Pettis	Thone
Kemp	Peyser	Thornton
Ketchum	Pickle	Traxler
Kluczynski	Pike	Treen
Koch	Price, Ill.	Udall
Kuykendall	Price, Tex.	Van Deerlin
Kyros	Quie	Vander Jagt
Lagomarsino	Quillen	Vander Veen
Landrum	Railsback	Vanik
Latta	Randall	Veysey
Leggett	Rangel	Vigorito
Lehman	Regula	Waggonner
Lent	Reuss	Waldie
Litton	Riegle	Walsh
Long, La.	Rinaldo	Wampler
Long, Md.	Robinson, Va.	Ware
Lott	Robison, N.Y.	Whalen
McClory	Rodino	White
McCollister	Roe	Whitten
McCormack	Rogers	Wiggins
McDade	Roncalio, Wyo.	Williams
McEwen	Roncallo, N.Y.	Wilson, Bob
McFall	Rooney, Pa.	Wilson, Charles H., Calif.
McKay	Rose	
McKinney	Rosenthal	
McSpadden	Rostenkowski	Wilson, Charles, Tex.
Macdonald	Roush	
Madden	Rousselot	Winn
Madigan	Roybal	Wolff
Mann	Ruppe	Wright
Martin, Nebr.	Ruth	Wyatt
Matsunaga	Ryan	Wydler
Mayne	St Germain	Wylie
Mazzoli	Sandman	Wyman
Meeds	Sarasin	Yates
Melcher	Sarbanes	Yatron
Metcalfe	Satterfield	Young, Alaska
Mezvinsky	Scherle	Young, Fla.
Michel	Schneebeli	Young, Ga.
Milford	Schroeder	Young, Ill.
Miller	Sebelius	Young, Tex.
Minish	Seiberling	Zablocki
Mink	Shipley	Zion
Mitchell, Md.	Shriver	
Mizell	Shuster	

NAYS—2

Burleson, Tex.	Landgrebe

NOT VOTING—83

Adams	Hanna	Powell, Ohio
Archer	Hansen, Idaho	Preyer
Armstrong	Hays	Pritchard
Bell	Hébert	Rarick
Blackburn	Hinshaw	Rees
Blatnik	Hosmer	Reid
Brasco	Hudnut	Rhodes
Brown, Mich.	Hunt	Roberts
Burke, Calif.	Johnson, Colo.	Rooney, N.Y.
Carey, N.Y.	Jones, Okla.	Roy
Carter	King	Runnels
Clawson, Del	Lujan	Shoup
Clay	Luken	Sikes
Cohen	McCloskey	Snyder
Conable	Mahon	Steele
Conyers	Mallary	Steelman
Daniel, Robert W., Jr.	Maraziti	Stratton
	Martin, N.C.	Symington
Daniels, Dominick V.	Mathias, Calif.	Symms
	Mathis, Ga.	Taylor, Mo.
Diggs	Mills	Teague
Dorn	Minshall, Ohio	Tiernan
Eckhardt	Mitchell, N.Y.	Towell, Nev.
Evins, Tenn.	Murtha	Ullman
Findley	Nelsen	Whitehurst
Giaimo	O'Neill	Widnall
Grasso	Pepper	Young, S.C.
Hammer-schmidt	Poage	Zwach
	Podell	

So the conference report was agreed to.

The Clerk announced the following pairs:

Mr. Rooney of New York with Mr. Dorn.
Mr. Hébert with Mr. Blatnik.
Mr. Dominick V. Daniels with Mrs. Burke of California.
Mr. Sikes with Mr. Clay.
Mr. Stratton with Mr. Mahon.
Mr. Adams with Mr. Nelsen.
Mr. Carey of New York with Mr. Minshall of Ohio.
Mr. Giaimo with Mr. Hansen of Idaho.
Mr. Mathis of Georgia with Mr. Hosmer.
Mr. Roberts with Mr. Martin of North Carolina.
Mr. Hays with Mr. Maraziti.
Mr. Conyers with Mr. Luken.
Mr. Reid with Mr. Mallary.
Mr. Diggs with Mr. Tiernan.
Mr. Teague with Mr. Cohen.
Mr. Ullman with Mr. Brown of Michigan.
Mr. Pepper with Mr. King.
Mr. Preyer with Mr. Blackburn.
Mr. Roy with Mr. Hinshaw.
Mr. Hanna with Mr. Carter.
Mrs. Grasso with Mr. Bell.
Mr. Jones of Oklahoma with Mr. Conable.
Mr. Mills with Mr. Archer.
Mr. Rarick with Mr. Robert W. Daniel, Jr.
Mr. Runnels with Mr. Del Clawson.
Mr. Eckhardt with Mr. Findley.
Mr. Evins of Tennessee with Mr. Hammerschmidt.
Mr. Murtha with Mr. Hudnut.
Mr. Symington with Mr. Lujan.
Mr. O'Neill with Mr. Hunt.
Mr. Mitchell of New York with Mr. Mathias of California.
Mr. Steelman with Mr. McCloskey.
Mr. Pritchard with Mr. Powell of Ohio.
Mr. Shoup with Mr. Rees.
Mr. Widnall with Mr. Snyder.
Mr. Symms with Mr. Steele.
Mr. Taylor of Missouri with Mr. Zwach.
Mr. Whitehurst with Mr. Towell of Nevada.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Freedom of Information conference report just agreed to.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

COMMITTEE REFORM AMENDMENTS OF 1974

Mr. BOLLING. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the resolution (H. Res. 988) to reform the structure, jurisdiction, and procedures of the committees of the House of Representatives by amending rules X and XI of the Rules of the House of Representatives.

The SPEAKER. The question is on the motion offered by the gentleman from Missouri (Mr. BOLLING).

The question was taken; and the Speaker announced that he was in doubt.

RECORDED VOTE

Mr. ANNUNZIO. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 211, noes 121, not voting 102, as follows:

[Roll No. 575]

AYES—211

Abdnor	Gilman	Pettis
Abzug	Ginn	Peyser
Addabbo	Gonzalez	Pickle
Anderson, Calif.	Green, Pa.	Pike
	Grover	Railsback
Anderson, Ill.	Gubser	Randall
Andrews, N.C.	Gude	Rangel
Andrews, N. Dak.	Gunter	Regula
	Guyer	Reuss
Ashley	Hamilton	Riegle
Aspin	Hanley	Rinaldo
Badillo	Hanrahan	Robinson, Va.
Bafalis	Hansen, Wash.	Robison, N.Y.
Beard	Harrington	Rodino
Bennett	Harsha	Roe
Bergland	Hastings	Rogers
Biester	Hechler, W. Va.	Roncalio, Wyo.
Bingham	Heckler, Mass.	Roncallo, N.Y.
Boggs	Heinz	Rose
Boland	Helstoski	Rosenthal
Bolling	Hillis	Roush
Breaux	Holtzman	Roybal
Breckinridge	Horton	Ruppe
Brinkley	Howard	Ruth
Broomfield	Huber	Sarasin
Brotzman	Hungate	Sarbanes
Brown, Calif.	Hutchinson	Schroeder
Brown, Ohio	Ichord	Sebelius
Buchanan	Jordan	Seiberling
Burgener	Karth	Shipley
Burlison, Mo.	Kazen	Shriver
Burton, John	Kemp	Smith, Iowa
Burton, Phillip	Ketchum	Stanton, J. William
Butler	Koch	
Chisholm	Kyros	Stanton, James V.
Clancy	Lagomarsino	Stark
Clausen, Don H.	Landgrebe	Steed
	Lehman	Steiger, Ariz.
Cleveland	Lent	Steiger, Wis.
Cochran	Litton	Stephens
Collins, Ill.	Long, La.	Studds
Conlan	McClory	Talcott
Conte	McCollister	Taylor, N.C.
Corman	McCormack	Thomson, Wis.
Cotter	McDade	Thone
Coughlin	McSpadden	Van Deerlin
Cronin	Madigan	Vander Jagt
Culver	Mahon	Vander Veen
de la Garza	Matsunaga	Vanik
Dellenback	Mazzoli	Vigorito
Dellums	Meeds	Walsh
Denholm	Melcher	Wampler
Dennis	Mezvinsky	Whitten
Donohue	Milford	Wiggins
Drinan	Miller	Wilson, Bob
Duncan	Minish	Wilson, Charles, Tex.
du Pont	Mitchell, Md.	
Edwards, Calif.	Mizell	Winn
Eilberg	Moakley	Wolff
Erlenborn	Mollohan	Wright
Esch	Moorhead, Calif.	Wyatt
Eshleman		Wydler
Fascell	Moorhead, Pa.	Wylie
Flood	Morgan	Wyman
Flynt	Mosher	Yates
Foley	Natcher	Yatron
Forsythe	Obey	Young, Fla.
Fraser	O'Brien	Young, Ga.
Frelinghuysen	Owens	Young, Ill.
Frenzel	Parris	Zablocki
Froehlich	Passman	Zion
Fuqua	Patten	
Gettys	Perkins	

NOES—121

Alexander	Burke, Mass.	Davis, S.C.
Annunzio	Burleson, Tex.	Davis, Wis.
Arends	Byron	Delaney
Ashbrook	Camp	Dent
Baker	Carney, Ohio	Derwinski
Bauman	Casey, Tex.	Devine
Bevill	Cederberg	Dickinson
Blaggi	Chamberlain	Dingell
Bowen	Chappell	Downing
Brademas	Clark	Dulski
Bray	Collier	Evans, Colo.
Brooks	Collins, Tex.	Fisher
Broyhill, N.C.	Crane	Flowers
Broyhill, Va.	Daniel, Dan	Fountain
Burke, Fla.	Danielson	Frey
Fulton	McEwen	St Germain
Gaydos	McFall	Sandman
Gibbons	McKay	Satterfield
Goldwater	Macdonald	Scherle
Goodling	Martin, Nebr.	Schneebeli
Green, Oreg.	Mayne	Shuster
Gross	Metcalfe	Skubitz
Haley	Michel	Smith, N.Y.
Hawkins	Mink	Spence
Henderson	Montgomery	Staggers
Hicks	Moss	Stokes
Hogan	Murphy, Ill.	Stubblefield
Holifield	Murphy, N.Y.	Stuckey
Holt	Myers	Sullivan
Jarman	Nedzi	Thompson, N.J.
Johnson, Calif.	Nichols	Thornton
Johnson, Pa.	Nix	Treen
Jones, Ala.	O'Hara	Waggonner
Jones, N.C.	Price, Ill.	Ware
Jones, Tenn.	Price, Tex.	Whalen
Kastenmeier	Quie	White
Kluczynski	Quillen	Williams
Latta	Rooney, Pa.	Young, Alaska
Leggett	Rostenkowski	Young, Tex.
Long, Md.	Rousselot	
Lott	Ryan	

NOT VOTING—102

Adams	Hanna	Pritchard
Archer	Hansen, Idaho	Rarick
Armstrong	Hays	Rees
Barrett	Hébert	Reid
Bell	Hinshaw	Rhodes
Blackburn	Hosmer	Roberts
Blatnik	Hudnut	Rooney, N.Y.
Brasco	Hunt	Roy
Brown, Mich.	Johnson, Colo.	Runnels
Burke, Calif.	Jones, Okla.	Shoup
Carey, N.Y.	King	Sikes
Carter	Kuykendall	Sisk
Clawson, Del	Landrum	Slack
Clay	Lujan	Snyder
Cohen	Luken	Steele
Conable	McCloskey	Steelman
Conyers	McKinney	Stratton
Daniel, Robert W., Jr.	Madden	Symington
	Mallary	Symms
Daniels, Dominick V.	Mann	Taylor, Mo.
	Maraziti	Teague
Davis, Ga.	Martin, N.C.	Tiernan
Diggs	Mathias, Calif.	Towell, Nev.
Dorn	Mathis, Ga.	Traxler
Eckhardt	Mills	Udall
Edwards, Ala.	Minshall, Ohio	Ullman
Evins, Tenn.	Mitchell, N.Y.	Veysey
Findley	Murtha	Waldie
Fish	Nelsen	Whitehurst
Ford	O'Neill	Widnall
Giaimo	Patman	Wilson, Charles H., Calif.
Grasso	Pepper	
Gray	Poage	
Griffiths	Podell	Young, S.C.
Hammer-schmidt	Powell, Ohio	Zwach
	Preyer	

So the motion was agreed to.

The result of the vote was announced as above recorded.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the resolution House Resolution 988, with Mr. NATCHER in the chair.

The Clerk read the title of the resolution.

The CHAIRMAN. When the Committee rose on Thursday, October 3, 1974, there were pending the amendment in the nature of a substitute offered by the gentlewoman from Washington (Mrs. HANSEN), the amendment offered as a substitute by the gentleman from Nebraska (Mr. MARTIN) for the Hansen amendment, the amendment offered by the gentleman from Florida (Mr. BENNET) to the Hansen amendment, and the amendment offered by the gentlewoman from Missouri (Mrs. SULLIVAN) to the substitute amendment offered by the gentleman from Nebraska (Mr. MARTIN).

Mr. BOLLING. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I appreciate the feelings of the Members who felt that it was not wise to go into the Committee of the Whole at this hour on the consideration of a resolution that is so far from completion. I know that other Members have the same desires that I have concerning the events that are going to take place later in the evening, and I know that they hope that they might be able to see them. I know the Members would like very much for this matter to go away; at least some of the Members would.

I only sought to go into the Committee of the Whole so that we might come to some kind of an arrangement as to how, in a reasonable time tomorrow or perhaps the next day, we might conclude the matter.

I would like to explain what my preference would be. I would like to see that the House is absolutely fair to every Member. One of the dilemmas we suffer from is the necessary tightness of the parliamentary procedure.

Mr. Chairman, I am going to make a unanimous-consent request—and it is a request that could never be turned into a motion—to schedule things in such a way that we will have a fair debate on everything, including the basic resolution. I doubt that that will prevail. That request cannot be made in the form of a motion.

I would seek a situation where we could continue in an orderly fashion to amend both the amendment in the nature of a substitute offered by the gentlewoman from Washington (Mrs. HANSEN) and the substitute for that amendment in the nature of a substitute offered by the gentleman from Nebraska (Mr. MARTIN), but I cannot figure out any way to do it in such a way that it can be put in the form of a motion.

So I will make the unanimous-consent request which will do that and which will also provide for a reasonable amount of time to amend House Resolution 988, in the event that neither the Martin substitute nor the Hansen amendment in the nature of a substitute is adopted.

If that does not prevail then I will make a motion to limit the time on the amendment in the nature of a substitute offered by the gentlewoman from Washington (Mrs. HANSEN) and all amendments thereto, to a certain number of hours; because I know that that can be made in a motion. I have been trying to figure out whether a time certain or a certain number of hours would give the least opportunity for that small number who wish to filibuster it. I have come to the conclusion that there is really very little choice, because an able parliamentarian can filibuster any closure approach.

What I would think would be the ideal situation would be to provide a unanimous consent request that we do this: That there be 2 hours of further debate on perfecting amendments to the amendment in the nature of a substitute offered by the gentlewoman from Washington (Mrs. HANSEN); that upon the conclusion of that there be 2 hours of debate on perfecting amendments to the Martin substitute to the amendment in the nature of a substitute; and then upon the conclusion of that we vote on Martin as perfected versus Hansen as perfected. If then the vote comes on one as opposed to House Resolution 988, and House Resolution 988 does prevail, that then there be 5 hours of debate on amendments to House Resolution 988. At the end of which time, which I suspect would be some time early Wednesday evening, with some luck, we would then have a vote on the final matter.

This is an attempt by unanimous consent to structure things so that everybody gets a fair shot at their substitute or their amendment so that the House does not have to wonder what it is going to do.

I do not like late sessions any more than anybody else does.

With that I will pose my unanimous consent request, and be glad to yield to those who wish to object, or reserve the right to object.

Mr. GROSS. Mr. Chairman, reserving the right to object——

The CHAIRMAN. The gentleman from Iowa reserves the right to object.

Mr. DINGELL. Mr. Chairman, the same reservation of objection.

Mr. GIBBONS. Mr. Chairman, the same reservation of objection.

Mr. GROSS. Mr. Chairman, I would say to the gentleman from Missouri that I would be glad to expedite conclusion of debate if the House is ready for it by offering a preferential motion at this point to strike the enacting clause.

Mr. BOLLING. That is the kind of assistance that does not really come within my unanimous-consent request.

Mr. GROSS. I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Missouri?

Mr. DINGELL. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. BOLLING. Mr. Chairman, I move that all debate on the amendment in the nature of a substitute offered by the gentlewoman from Washington (Mrs. HANSEN), and all amendments thereto, conclude in 5 hours.

The CHAIRMAN. The question is on the motion.

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. BOLLING. Mr. Chairman, I demand a recorded vote.

PARLIAMENTARY INQUIRY

Mr. O'HARA. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. O'HARA. Mr. Chairman, if the motion were to be agreed on, what effect would that have on amendments that have been printed in the RECORD under the rule?

The CHAIRMAN (Mr. NATCHER). The Chair will state that amendments printed in the RECORD would be protected.

Mr. O'HARA. A further parliamentary inquiry, Mr. Chairman. Would there be time for debate guaranteed to those amendments?

The CHAIRMAN (Mr. NATCHER). The Chair will state that the gentleman's statement is correct; they would be protected.

Mr. O'HARA. I thank the Chairman.

PARLIAMENTARY INQUIRY

Mr. DENNIS. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. DENNIS. Mr. Chairman, what is the effect of this motion on amendments which are either pending or matters offered to the Martin substitute if any? The Martin substitute being a substitute for the Hansen amendment, I am wondering if there is any effect on the Martin amendment, and if so, what it is.

The CHAIRMAN. The Chair would like to state to the gentleman from Indiana that the motion now pending on the floor is to limit debate on all amendments now pending or which would be offered to the Hansen amendment in the nature of a substitute and thus would include the Martin substitute.

Mr. YATES. Mr. Chairman, how many amendments are pending at the present time?

The CHAIRMAN. In answer to the gentleman from Illinois, the Chair will state there are eight amendments pending.

Mr. YATES. I thank the Chairman.

The CHAIRMAN. And there are a number in the record that are not at the desk.

PARLIAMENTARY INQUIRY

Mr. ASHBROOK. Mr. Chairman, I have a further parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. ASHBROOK. Mr. Chairman, it is my understanding that when time is limited under the rules of the House, the Chair normally recognizes those Members standing and allocates time. I pose the question to the Chair whether that would or would not be the procedure for as long as we would proceed, for as long as a period of 5 hours?

The CHAIRMAN (Mr. NATCHER). The Chair would like to advise the gentleman that those amendments pending and those that would be offered would, of course, be considered. As far as the Members standing on the request that is now before the committee, it would seem to the Chair that it would be premature to recognize the Members standing when there are a number of Members not present at this time who would like to be heard.

PARLIAMENTARY INQUIRY

Mr. THOMPSON of New Jersey. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. THOMPSON of New Jersey. Mr. Chairman, I did not understand the Chair's answer to the parliamentary inquiry by the gentleman from Michigan (Mr. O'HARA). Is it my understanding that notwithstanding that 5 hours under the gentleman's motion would dispose of the Hansen and Martin substitutes, in addition thereto for those amendments which have been printed in the RECORD will there be time to debate them allowed?

The CHAIRMAN (Mr. NATCHER). The Chair would like to advise the gentle-

THE WASHINGTON POST DATE 8 09 74 PAGE 8

Right to Know

Congress, climaxing three years of work, finished action on a compromise bill designed to improve the anti-secrecy punch of the nation's basic "right to know" law and sent it to President Ford.

The House took the final congressional step as it voted 349 to 2 in favor of the compromise legislation that had cleared the Senate by voice vote last Tuesday.

The bill, providing the first changes in the Freedom of Information Act since this law became effective on July 4, 1967, is intended to strengthen the public's access to government documents by generally making it easier and quicker to do so.

Basically, the bill would authorize federal courts to go privately behind a secrecy stamp and see if documents were properly classified.

component within the Department of Juvenile Services which would provide diagnosis, screening and diversion. The goal in this area is that only 10 per cent of all juveniles first reaching intake would go through the formal adjudication process.)

Diversion

The report said each local jurisdiction should develop and implement by 1975 formally organized programs for diversion that can be applied in the criminal justice process from the time an illegal act occurs to the moment of adjudication.

Factors to be considered in determining whether an offender is to be selected for diversion include: the arrest has already served as the desired deterrant, the needs and interests of the victim and society are better served by diversion than by official processing, the offender does not present a substantial danger to others, the offender voluntarily accepts the offered alternative to further criminal justice system process, or the facts of the case do not sufficiently establish that the defendant committed the alleged act.

(The Governor's Commission has provided substantial funding support to a diversion project in Baltimore City, Project F.O.U.N.D. (First Offenders Under New Direction). The project is designed to divert from the court process young adult first offenders charged with certain misdemeanors. It offers a combination of counseling, educational, vocational and supportive services as an alternative to criminal adjudication.)

FREEDOM OF INFORMATION ACT

Mr. MUSKIE. Mr. President, the Senate and House have sent to the President a bill to insure greater openness and public knowledge about the way our Government is run. The amendments to the Freedom of Information Act of 1966 are a most significant product of this post-Watergate period because they will bring the people closer to the materials, facts and documents on which officials in the Government base their decisions and policies.

That legislation may be in jeopardy. While it was sent to the President on October 9, we must still await a decision whether he will sign the measure into law or return it to the Congress with a veto. Unfortunately, should the Congress recess before midnight Saturday, President Ford could simply let the bill sit on his desk to die by the pocket veto.

This would be a serious blow to our Government as we attempt to restore public confidence through more open processes.

Congress cannot override a pocket veto. Instead we would have to wait until next session and begin again with a new bill.

We must not delay the people's opportunity to know more about their Government. Already that right has been eroded by too little candor and too much secrecy.

It would be a regrettable irony if a decision to deny the people greater access to their Government is decided without further debate behind closed doors of the White House by a new administration, only recently pledged to openness and candor.

I want to take this opportunity to extend my congratulations and appreciation to my friend and able colleague the senior Senator from Massachusetts (Mr. KENNEDY) for the dedicated contribution he has made to these important improvements of the Freedom of Information Act.

No one can underestimate the dilligence and concern with which he, the other members of the Committee on the Judiciary, and the Senate and House conferees have worked to insure that the changes made in the 1967 act will, in fact, further the vital work of making Government records readily available for public scrutiny and making the conduct of the public business a subject for informed public comment.

This has been a very rare and important opportunity to correct the defects we discovered in the administration of the act during joint hearings I conducted with Senator KENNEDY and Senator ERVIN last year. In many important procedural areas the conference report on H.R. 12471 will close loopholes through which agencies were evading their duties to the public right to know.

The price of a court suit has too long been a deterrent to legitimate citizen contests of Government secrecy claims. This legislation will enable courts to award costs and attorneys' fees to plaintiffs who successfully contest agency withholding of information. Additionally, these changes will require agencies to respond promptly to requests for access to information. They will help bar the stalling tactics which too many agencies have used to frustrate requests for material until the material loses its timeliness to an issue under public debate. And they provide long-overdue assurance that agencies will report to the Congress on their policies and actions in handling Freedom of Information Act cases.

In one major respect this legislation responds to a weakness in the existing law which was illustrated in the case of Environmental Protection Agency against Patsy T. Mink, and others, decided by the Supreme Court on January 22, 1973.

In that case, 32 Members of Congress, bringing suit as private citizens, sought access to information dealing with the atomic test on Amchitka Island in Alaska.

A U.S. court of appeals directed the Federal district judge trying the case to review the documents in camera to determine which, if any, should be released. This seemed an appropriate step since the act now provides for court determination of the validity of any executive branch withholdings.

The Supreme Court was asked to review that order and reached a decision in that case which was somewhat tortuous. The Court held that in camera review of material classified for national defense or foreign policy reasons was not permitted by the act. The basis of this decision was the exemption of the act which permits withholding of matters authorized by Executive order to be kept secret in the interests of national defense or foreign policy.

The Supreme Court decided that once the executive had shown that documents were so classified, the judiciary could not intrude. Thus, the mere rubberstamping of a document as "secret" could forever immunize it from disclosure. All the Court could determine was whether it was so stamped.

The measure before the President would specifically overrule that holding. And it is that provision which seems to cause him the greatest difficulty.

When the Freedom of Information Act amendments were considered by the Senate, I offered a change which would authorize the courts to conduct in camera a review of documents classified by the Government to determine if the public interest would be better served by keeping the information in question secret or making it available to the public.

My amendment was a response to the increased tendency of former administrations to use national security to shield errors in judgment or controversial decisions.

It was a response as well to the mounting evidence, more recently confirmed in tapes of Presidential conversations, that national security reasons were deliberately used to block investigations of White House involvement in Watergate.

Finally that amendment reflects confidence in the Federal judiciary to review determinations to classify secret documents and to decide whether the greater public interest rests with public disclosure or continued protection.

I cannot understand why we should trust a Federal judge to sort out valid from invalid claims of executive privilege in litigation involving criminal conduct, but not trust him or his colleagues to make the same unfettered judgments in matters allegedly connected to the conduct of national defense or foreign policy.

As a practical matter, I cannot imagine that any Federal judge would throw open the gates of the Nation's classified secrets, or that they would substitute their judgment for the head of an agency without carefully weighing all the evidence in the arguments presented by both sides. It is doubtful that there is any Federal judge in the country that would not give weight to an affidavit from the head of an agency which argues the merits for classifying a particular document without giving that affidavit a special status.

If we construct the manner in which courts may perform this vital review function, we make the classifiers privileged officials, almost immune from the accountability we insist on from their colleagues.

An editorial in the New York Times today refers to reservations the President reportedly has expressed about this legislation on national security grounds.

I believe as the editorial states that the Congress has "made an extraordinary legislative effort to balance the public's right to information with the Government's need to protect its legitimate secrets," and I would strongly urge the President to sign this important bill into law.

If he cannot sign it, he should so state his reasons and offer the Congress an opportunity to accept or reject the veto by a two-thirds vote in both Houses.

I ask unanimous consent that the October 17, 1974, New York Times editorial, "More Open Government," be printed in the RECORD.

Race and sex

On the basis of race and sex, there is little variation in failure-to-appear rates, except that the rates for white females are significantly lower than the others. The total rate for non-white females was 4.1 percent; for non-white males, 4.0 percent; for white females, 1.8 percent, and for white males, 3.9 percent.

Age

Defendants were categorized into three age groups; 20 years or less, 21 to 29 years and 30 years or older. Defendants who were 20 years of age or younger had a slightly higher failure-to-appear rate than the older defendants; 4.5 percent as opposed to 2.9 percent in the 21 to 29 years group and 3.6 percent in the 30 years and older group.

Seriousness of charge

Baltimore City data was analyzed to observe whether there may be a relationship between the seriousness of the charge against the defendant and the likelihood of appearance at trial. Differences were found to exist among the misdemeanor charges. The failure-to-appear rate was 3.2 percent for minor misdemeanors (such as gambling, liquor law violations, disturbing the peace) and 4.2 percent for serious misdemeanors (such as assault and battery, marijuana possession, vandalism). A low failure-to-appear rate was reported for felony charges (3.1 percent), but there was a higher rate of detention for suspected felons and thus those defendants were not subject to the same risk of non-appearance."

Criminal activity between release and trial

Of the target population, 16 persons (0.4 percent) of the 3,686 under the jurisdiction of Baltimore City committed new offenses between the time they were first released and their trial for that arrest in Baltimore County there were seven new arrests (1.4 percent) and in Prince George's County there were twelve news arrests (1.8 percent).

The study also examined the role of District Court commissioners who, as judicial officers, are generally the first contact the offender has with the criminal justice system in Maryland. A duty of the commissioner is determining a defendant's eligibility for pretrial release under Rule 777.

The study points out that although any arrestee detained as a result of a commissioner's decision gets a bail review hearing before a District Court judge, "from a practical standpoint it is the commissioners who are making the pretrial release decisions."

Three major needs were pointed out insofar as the commissioner system is concerned. First, there is a need for more clearly articulated guidelines to be followed in making release decisions. Second, more information about the defendant is needed to assist in the decision-making process. Third, a formalized training program for commissioners should be developed which would provide both pre-service and in-service training.

A REPORT OF THE NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS

This article highlights the major recommendations made by the Task Force on Corrections of the National Advisory Commission on Criminal Justice Standards and Goals. The Task Force—one of five surveying problems and needs in all areas of the criminal justice system—was chaired by Judge Joe Frazier Brown, former executive director of the Texas Criminal Justice Council.

The National Advisory Commission studied the criminal justice system for two years under a grant from the Law Enforcement Assistance Administration (LEAA). Its findings were made public in a final report consisting of a summary volume, "A National Strategy to Reduce Crime," and five individual Task Force Reports: "Police," "Courts," "Corrections," "Community Crime Prevention," and "The Criminal Justice System."

LEAA officials have emphasized that the Standards and Goals recommendations are advisory in nature and that the federal government does not intend to impose them on states and local units of government.

The Standards and Goals recommendations are among material currently being reviewed by a number of subcommittees of the Governor's Commission, which have begun the planning process aimed at further defining criminal justice standards and goals for Maryland agencies.

Emphasizing that a "new view" of corrections is needed, the Corrections Task Force stated that a fundamental objective of corrections must be to secure for the offender contacts, experiences and opportunities that provide a means and stimulus for pursuing a lawful style of living in the community.

"With this thrust," their report says, "reintegration of the offender into the community comes to the fore as a major purpose of corrections." It is further noted that "the failure of major institutions to reduce crime is incontestable. . . . The mystery is that they have not contributed even more to increasing crime."

The report deals substantively with seven major areas: sentencing, institutions, rights of offenders, protection against personal abuse, ombudsmen, juvenile delinquency and diversion.

Sentencing

The report says a study of sentences and actual time served by first releasees indicates that in many states a substantial portion of offenders released in 1970 had been sentenced to five years or more but a relatively small percentage had actually served more than five years. A very small percentage had served 10 years or more.

It was recommended that prison terms be set at not more than five years unless it is determined that the defendant is a persistent felony offender, a professional criminal or a dangerous offender. Under these circumstances, a 25 year sentence would be given. This would not apply in the case of murder.

Among the recommended sentencing alternatives were unconditional release, conditional release, a fine, release under community supervision, sentence to a halfway house or other community-based facility or sentence to partial confinement with liberty to work or participate in training and education during all but leisure time.

Institutions

The Task Force recommended that all local detention and correctional facilities, both pre- and post-conviction, should be incorporated under state systems by 1982.

"States should also," the report said, "develop community-based resources and coordinate planning for community-based correction services on a state and regional basis."

In addition, it was recommended that there be a 10-year moratorium on the construction of correctional institutions except when an "analysis of the total criminal justice and adult corrections systems produces a clear finding that no alternative is possible."

(The long range—10–15 year—plans of the Governor's Commission call for a system of community-based correctional facilities and services to be implemented in Maryland. The cornerstone of this capability would be expanded parole and probation services and the development of a system of community correctional centers throughout the State.

Three types of jurisdictional centers would be established. *Regional* centers would be located in less populated combined counties. *Single County* centers would be located in several highly urbanized counties. *Multiple* centers would be located within urbanized areas—counties or cities—having a large number of incarcerated persons.)

Rights of offenders

Stating that the strategy of correctional reform must be built on a foundation of nondiscriminatory and just action, the Task Force concluded that "convicted offenders should retain all rights that citizens in general have except those rights that must be limited in order to carry out the criminal sanction or to administer a correctional facility or agency."

Until recently, the report said, an offender was deemed as a matter of law to have forfeited virtually all rights upon his conviction and to have retained only such rights as were expressly granted to him by statute or correctional authority.

It was further noted that the issue of offenders' rights has been increasingly before the courts in recent years; therefore, the Task Force recommended that each correctional agency immediately develop and implement policies and procedures to assure that persons under correctional supervision have access to the courts to present any issue.

Protection against personal abuse

The report said each correctional agency should immediately formulate policies and procedures that would assure that the following are prohibited:

Corporal punishment.

The use of physical force by correctional staff except when absolutely necessary.

Solitary or segregated confinement except as a last resort, and then not to last more than 10 days.

Any deprivation of clothing, bed and bedding, light, ventilation, heat, exercise, balanced diet or hygienic necessities.

Any act or lack of care that injures or significantly impairs the health of an offender.

Ombudsmen

The Task Force called on every correctional agency to have a designated ombudsman who is trained, compensated and organizationally experienced. "He would hear complaints of employees and inmates who feel aggrieved by the organization or its management, or (in the case of offenders) who feel aggrieved by employees or conditions of their incarceration," the report said.

Juvenile delinquency

In its standards on juvenile delinquency proceedings, the report recommended that the delinquency jurisdiction of the courts be more clearly defined and called on the states to adopt legislation by 1975 to achieve that goal.

The legislation also should include provisions governing the detention of juveniles accused of delinquent conduct, the report said. It suggested a prohibition against detaining juveniles in jails, lockups or other facilities used for housing adults, criteria for detention prior to the adjudication of delinquency matters; a maximum of overnight detention for juveniles prior to their first juvenile hearing; and courts, not law enforcement officers, deciding whether a juvenile should be detained.

(Maryland statutes provide that, after January 1, 1975, children who are alleged either delinquent or in need of supervision shall not be detained in facilities which are being used to detain adults or to which delinquents have been committed.)

"Use of state institutions for juveniles and youths should be discouraged. The emerging trend in treatment of young defenders is diversion from the criminal justice system. When diversion is not possible, the focus should be on community programs," the report said.

(The Commission's long range plans, similarly, call for a strong court services

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Oct. 17, 1974]

MORE OPEN GOVERNMENT

The Freedom of Information Act was passed by Congress in 1966 on the assumption that the public should have broad right of access to information about the workings of its Government. The act hasn't functioned particularly well since it went into effect because of the Federal Government's use of a variety of obstructionist tactics ranging from forcing those seeking information into long and costly litigation to plain old bureaucratic foot-dragging.

Congress has now passed and sent to the White House a number of amendments designed to make the law work more effectively, including a provision that would subject to judicial review decisions on the classification of information. Other amendments would open up noncriminal investigatory files for the first time and would award attorney's fees to successful public litigant.

The Department of Justice is reported to have recommended that President Ford veto this legislation. The President himself has reportedly expressed reservations about the bill on national security grounds.

Mr. Ford's concern appears misplaced. Congress, in developing the new amendments, made an extraordinary legislative effort to balance the public's right to information with the Government's need to protect its legitimate secrets. Unless the President feels that the Federal judiciary is insensitive to national security or is incapable of handling such issues appropriately, he can have no justifiable fears about the law's adequacy to protect legitimate national secrets.

The ability to preserve free and responsive government depends in large measure on the preservation of open government to the greatest possible degree. That is the principle that animated the Congress in passing the amendments. It is the motivation that should lead the President to sign them into law.

FARM-RETAIL PRICE SPREADS FOR RED MEAT

Mr. McCLURE. Mr. President, the past year has not been a good one for either farmers or consumers. We have seen store prices going up while farm prices were going down. Consumers have boycotted, because they could not afford to buy, while farmers have destroyed animals they could not afford to raise.

While there are a number of factors which have led to this paradoxical situation, one of the major ones is the increasing farm-retail price spreads. And the reaction has been just what we would expect—increasing criticism of the so-called middleman. But before we start allocating blame, we should attempt to get all the facts. In June, I joined with a number of my colleagues in calling on the President to investigate the increasing beef price spread, but as yet we have not received the administration's report.

However, while we are waiting for that report, there are some other sources of information which may prove helpful. A USDA Task Force prepared a report in August which partially explains the farm-retail price spreads for pork and choice beef.

This report not only shows how much the price spreads have increased—approximately 50 percent since 1968—but explains in general terms those factors which have been primarily responsible for this increase. It is interesting to note, for example, that since 1963, more than 90 percent of the farm-retail spread for beef has occurred in the carcass-retail segment of the spread.

While the report is rather general in most of its data and comments, it does provide a rather useful summary, as well as some suggestions on improving meat marketing performance in order to reduce the spread.

I, therefore, ask unanimous consent to have this report printed in the RECORD.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

FARM-RETAIL PRICE SPREADS FOR RED MEAT

(Report of a Special Task Force to Earl L. Butz, Secretary of Agriculture, August 1974)

The farm-retail spread, or margin, for beef or pork is the difference between a monthly average composite price per pound of selected cuts at retail and the farm value of the equivalent quantity of live animals less the value of byproducts.

Thus, the farm-retail spread is a measure of the charges for all marketing, processing and distribution activities that occur between the "farm gate" and consumer purchase of the product at retail.

Spreads, or margins, for meat, then, include charges for such activities as transporting animals to packing plants, slaughtering animals and processing products, packaging of product and shipping meat and products to major consuming areas. Each activity involves expenditures for labor, energy, capital, taxes and depreciation of fixed assets.

All such costs, plus profits earned by firms, are included in the price spread or margin reported by USDA. By the way, the price spread gives no indication of whether the industry is efficient or inefficient, or whether costs for marketing, processing and distribution are reasonable or excessive.

WHAT HAS HAPPENED SINCE 1963?

Price spreads for beef and pork have widened substantially in the past 10 years, particularly since 1968. Between 1963 and 1968 the spread for beef hovered between 28 and 30 cents per pound. Then it increased sharply and persistently to 45 cents per pound in 1973—a jump of about 50 percent.

Margins for pork have followed similar patterns but with greater year-to-year changes—ranging between 29 and 32 cents per pound in 1963-69, then widening to 38 cents per pound in 1973—an increase of about one-third.

Several factors contributed to the trend toward wider margins for red meat. Most important have been the sharp increases in costs of labor and other services and supplies required by marketing firms. Hourly earnings of workers in meat packing and processing are three-fourths higher than earnings in 1963. In the food retailing sector hourly wage earnings are about 80 percent higher than in 1963.

Despite labor saving technology and increased labor productivity total labor costs have risen substantially and account for about half of the farm-retail spread for beef and pork.

Prices of containers, packaging, energy and rail freight rates have undergone similar dramatic increases, particularly since 1969.

In a very real sense, marketing margins for meat are the result of the strong inflationary pressures in the American economy since 1969.

In addition, the meat marketing system, like other parts of the food system, now provides additional services in the form of further processing which requires relatively large inputs of labor. Costs of providing such services plus those for advertising, promotion and convenience of store location, exert pressure for widening margins for many foods, including red meat.

BEEF SPREAD SEGMENTS

Since 1963 more than 90 percent of the increase in the farm-retail spread for beef has occurred in the carcass-retail segment of the spread (Figure 1). This spread includes costs of activities such as carcass-breaking, local delivery, and retail cutting, packaging and selling.

The other segment, the farm-carcass spread, includes approximate costs of marketing, slaughtering and processing beef animals and transportation to consuming centers. Until the fourth quarter of 1973, when this spread nearly doubled, the farm-carcass spread had been remarkably stable since 1963.

It should be noted that these spreads are not synonomous with packer or retailer margins. The farm-carcass spread includes assembly and transportation of live animals to packing plants and meat to consuming center in addition to costs of slaughter at the packing plant. The carcass-retail spread includes wholesaling, local delivery costs, and some fabricating activities as well as costs of retailing.

Both packers and retailers do some breaking of carcasses but in the USDA price spreads all such activities are accounted for in the carcass-retail spread.

PORK SPREAD SEGMENTS

Changes in the farm-wholesale and wholesale-retail spreads for pork have shown somewhat different patterns from beef spreads.

Since packers do much more processing of pork than beef, the farm-wholesale spread for pork is substantially wider and more closely approximates packer margins than does the farm-carcass spread for beef.

The farm-wholesale spread for pork in 1973 averaged 15.3 cents per pound, about the same as in 1963. Again the major cause of the increase in farm-retail margins was centered in the wholesale-retail segment where margins in 1973 averaged 62 percent above 1963 and 26 percent above 1972.

PROFITS

Throughout much of the period since 1960, profits as a percentage of stockholder equity ranged between 10 and 13 percent for 15 major retail food chains as a group. As a percentage of sales, profits ranged between 1.1 and 1.3 through most of the period. Profit rates by both measures fell substantially in 1972 and 1973 and they were well below profit rates for other industry groups throughout the period 1960–73. Only recently have retailers' profits risen to their levels of the 1960's.

Meat packer profits were more unstable but ran somewhat higher relative to sales than those of food retailers.

Overall, profits in meat packing and food retailing have not been excessive relative to all manufacturing industries in the country.

RECENT CHANGES IN PRICE SPREADS

Meat price margins exploded late in the third quarter of 1973. They rose to record high levels in late winter and early spring of 1974 while market prices for cattle and hogs dropped sharply and losses mounted for livestock feeders. Both livestock producers and meat consumers vented their frustrations against what they considered to be an unresponsive, profiteering, meat marketing system.

Farm-retail price spreads for beef peaked in March 1974 at about 56 cents per pound, dropped slightly in April and May and then rebounded to 54 cents in June. Only in the

final quarter of 1973 had the farm-retail beef spread reached such lofty heights during the past 10 years.

The situation was much the same for pork margins, but with some differences in timing. At the peak in May 1974 the farm-retail margin totaled 54.5 cents per pound, well above even the high levels of late 1973 and early 1974.

Preliminary data for July signal a turnabout. Market prices for Choice steers strengthened by better than $6 per cwt over June; hog prices in July rose nearly $13 above their June low. Retail prices of beef in June were down significantly from early year levels and they held nearly steady in July. Preliminary data indicate the farm-retail spread declined substantially in July for both beef and pork.

To some extent the surge in margins in late 1973 and early 1974 was caused by the same set of factors that widened margins since 1968. Inflation was at very high rates in the fall of 1973 and the first half of 1974.

Between the third quarter of 1973 and the second quarter of 1974, prices of some marketing inputs rose sharply—energy up 48 percent; containers and packaging, 18 percent; and services, 7 percent. In the first quarter of 1974 hourly earnings of food marketing employees average $3.85, a 7 percent increase relative to the first quarter of 1973.

But inflation of prices of inputs used by marketing firms cannot alone explain the surge in meat margins.

CEILINGS AND PROFITS

The imposition of price ceilings on meat in March 1973 created serious disruptions in the normal flow of livestock. Live animal prices increased during the summer of 1973 when retail meat prices were frozen, which pinched marketing margins in the third quarter.

When ceilings were removed in late summer of 1973 pent-up cost increases passed through the system to consumers. Marketing firms attempted to recoup their losses or improve upon relatively low earnings experienced earlier in the year.

In the first three quarters of 1973 profits of 15 retail food chains ranged between 0.4 and 0.7 percent of sales—well below their historical levels of 1.1 to 1.3 percent. But in the fourth quarter of 1973 retailers' profit rates rose to 1.0 percent of sales. Preliminary data for 10 retail chains indicate that profit rates averaged 0.9 percent of sales in the first two quarters of 1974.

Meatpacker profits also rose in the fourth quarter of 1973 to 1.5 percent from about 1.0 percent of sales in the first three quarters of that year. Preliminary data suggest packers' profits ranged between 1.1 and 1.4 percent in the first two quarters of 1973 (Table 2).

Although packers and retailers improved their profit positions in late 1973 and early 1974 relative to their earlier positions in 1973, those higher rates were not out of line with longer term rates in the industry.

Profit rates, of course, vary substantially from quarter to quarter and among retail food firms. For example, returns for 15 retail food firms in the first quarter of 1974 ranged between a loss of 4.1 to a profit of 2.4 percent of sales. Among the same 15 firms eight had increased profit rates, six had reduced profit rates and one firm's rate was unchanged between the fourth quarter of 1973 and the first quarter of 1974.

But the foregoing profit data are for firms or groups of firms. Since many have multiple product lines or departments, a firm's profit rates do not necessarily indicate profit rates of individual product lines or departments. In any given short period of time, one department may incur losses while others return profits. Pricing policies of retail food chains focus upon returning profits to the firm or store as a whole and not necessarily upon profits in each department at all times.

When price spreads increase sharply in a short time span—as in the case of beef and pork in late 1973 and early 1974—we can expect that it is more profitable to handle those products. Prices of most inputs used in marketing—therefore, most costs of the department or firm—generally change more evenly.

We don't have data on the profit rates for departments of retail food stores. However, the changes in meat price spreads and general marketing costs suggests that the profits for retailing meat increased sharply during the first half of 1974. Based on this circumstantial evidence, it appears that the recent increase in meat price spreads was caused partially by food retailers changing their pricing policies to increase profits in their meat departments. On the other hand, higher profits for meat may have been offset partially by lower profits in other product lines and profits for the entire firm may have risen less steeply than in the meat department.

Based upon the preliminary data now available, it appears that the major factors contributing to wide spreads were inflation coupled with seriously distorted market relationships and higher profit rates in meat processing and retailing.

IMPROVING PERFORMANCE IN MEAT MARKETING

One way to dampen increases in price spreads is to improve efficiency and productivity in the marketing system. In a competitive industry such improvements tend to be passed backward to producers in the form of higher prices, or forward to consumers in the form of lower retail prices, or in some combination of the two.

An efficient, competitive industry also will reflect promptly and accurately the changes in supply, demand and prices as they occur. Earlier research and such reports as those of the National Commission on Productivity and the National Commission on Food Marketing point to important opportunities for improved performance in meat marketing.

Several examples follow.

1. Box beef and central meat cutting

A further shift to box beef and central meat cutting would lower marketing costs. Box beef is beef that has been cut up into retail cuts and packaged before being shipped to the retailer. When packers convert beef carcasses to box beef there are at least three immediate cost reductions:

(1) Assembly line meat cutting is more efficient in output per man hour;

(2) Wage rates per hour are generally lower in packing plants than in retail stores; and

(3) Fat and bone trimmed off reduce the total weight to be transported to the retail marketing area. Also, the larger concentration of fat and bone trimming allows alternative use of these products at higher value.

2. Frozen beef

Producing more frozen beef would extend the economies of box beef and central cutting. This would remove almost all packaging from the retail store, extend shelf life, reduce the number of deliveries to stores, and almost completely eliminate shrink and spoilage losses.

3. Transportation

Meat transportation costs can be reduced in several ways. Improved scheduling would decrease transportation costs. Box beef shipments would decrease weight and transportation costs. Backhauls could be increased to more fully utilize capacity. Meat transportation costs could be reduced by allowing trucks to pull two trailers on all interstate highways. The number of deliveries required per week at the retail level could be reduced.

4. Labor contract restrictions

Labor-management obstacles in some areas have slowed the move to box beef and centralized cutting. This includes the retail meat cutters' fear that there would be fewer jobs if meat cutting were relocated from the store to a central cutting warehouse in the same city. In addition, the union fears more jobs would be lost in consumption areas than would be gained at the packer-processor level if we moved to box beef.

Some labor contracts require a minimum number of personnel per retail outlet, and the contracts so narrowly define tasks that efficiency cannot be gained by flexible use of labor. Productivity in transporting meat is hindered by labor contract restrictions on loading and unloading trucks and contract terms which limit number of stops and the number of drivers.

We estimate that a minimum of five cents per retail pound could be saved from complete adoption of box beef and central cutting, conversion to frozen beef, elimination of trucks returning empty, and changes in labor-management obstacles.

5. Grade standards for beef

Uniform grade standards—universally understood and accepted—contribute to efficient marketing and lower marketing costs. Most of the beef sold at retail in recent years has been U.S. Choice. Recently there has been an increase in the percentage of Good grade beef produced, most of which has been sold ungraded since the use of Federal grades is optional. Federal grade standards for beef have undergone major revisions through the years—changes were made in 1939, 1941, 1949, 1950, 1956, 1965 and 1973.

To perform effectively as a language of the trade, grades must reflect characteristics which are significant in the marketplace. Existing quality grades for beef (Prime, Choice, Good, etc.) are designed primarily to measure eating quality—tenderness, juiciness, flavor. Yield grades (1 through 5) indicate the yield of closely trimmed retail cuts that can be derived from carcasses or wholesale cuts, and they directly reflect the degree of muscling and quantity of trimmable fat.

The USDA believes that grades should be revised as marketing conditions change. Recently, the Department has received divergent recommendations for further changes in the beef grade standards from five major segments of the cattle and beef industry and from consumer interest groups. Proposals concern the relative emphasis on marbling and maturity in determining quality grades.

USDA standardization specialists are evaluating these proposals and other alternatives. They are developing information to provide additional precision in yield grades. Real potential exists for reducing excess fat on beef through greater use of an accurate yield grading system.

6. USDA price spread measures

Although one large retail chain measures price spreads for beef and pork sold in its stores in seven cities, USDA is the only public source of such data on an industrywide basis. USDA price spread data have proven generally reliable indicators of both short- and longer-run changes in meat price spreads. USDA price spread data have served well as a basis for monitoring overall pricing performance. If kept abreast of changing practices in the sector those data should continue to serve well the public interest in a responsive and efficient marketing system.

7. Communication among producers, consumers, and marketing firms

Despite a wealth of information, there is a serious lack of public understanding concerning the organization and performance of the food industry. A classic example is the recent misunderstanding concerning

FOI Bill

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Threat to U.S. Secrets Cited

Ford Vetoes Information Bill

By Jules Witcover
Washington Post Staff Writer

President Ford, in his third veto this week and the eighth of his young administration, yesterday sent back to Congress the 1974 freedom of information bill. He called it "unconstitutional and unworkable" and a threat to American "military or intelligence secrets and diplomatic relations."

The President said provisions of the bill would enable the courts to declassify secret documents without expertise in the areas concerned, undermining national security, and would excessively burden the FBI and other agencies required to open their files to demands from press and public.

Sen. Edward M. Kennedy (D-Mass.), a major sponsor of the bill, immediately criticized the veto. "In the early days of his administration, the President promised an open government," he said. "But today he breaks that promise in yielding to the excessive desire for secrecy that characterized the most insidious aspects of the Nixon administration."

The President, in his veto message, said he was prepared

See VETO, A2, Col. 7

VETO, From A1

to accept a provision that would enable the courts "to inspect classified documents and review the justification for their classification." But, he said, "the courts should not be forced to make what amounts to the initial classification decision in sensitive and complex areas where they have no particular expertise.

"As the legislation now stands, a determination by the Secretary of Defense that disclosure of a document would endanger our national security would, even though reasonable, have to be overturned by a district judge who thought the plaintiff's position just as reasonable. Such a provision would violate constitutional principles, and give less weight before the courts to an executive determination involving the protection of our most vital national defense interests than is accorded determinations involving routine regulatory matters."

Mr. Ford proposed instead that the courts in reviewing the classification of any document under challenge would have to uphold the classification "if there is a reasonable basis to support it."

The President also said confidentiality of [illegible] would be maintained if FBI and other agency investigatory files had to be made public on request unless the government could prove specifically that disclosure would be harmful to the national interest.

The procedure would impose an impossible burden on the agencies, he said, as would a 10-day time limit for compliance and a 20-day limit for appeals stipulated in the bill. Mr. Ford said he will submit language of his own to Congress shortly.

The legislation, passed by both houses and sent to the White House Oct. 7, was designed to beef up the Freedom of Information Act of 1966.

In addition to the provisions singled out for criticism by Mr. Ford yesterday, the bill would have cut the time limit for agency responses to requests for information, set administrative penalties for arbitrary refusal, and permitted recovery of legal fees by successful petitioners.

The bill, aimed at cutting bureaucratic delay in producing sought information, at reducing the cost of bringing suit to force disclosure and excessive charges levied by agencies for finding information, was opposed by both the FBI and the National Security